



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: T [REDACTED] -M [REDACTED], R [REDACTED]

A 2 [REDACTED] -273

Date of this notice: 5/17/2019

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Mann, Ana
Liebmann, Beth S.
Morris, Daniel

User team: Docket

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Falls Church, Virginia 22041

File: A-273 – Pompano Beach, FL

Date:

MAY 17 2019

In re: R-T-M

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Laura F. Kelley, Esquire

ON BEHALF OF DHS: Shaheewa T. Jarrett Gelin
Assistant Chief Counsel

APPLICATION: Change in custody status

The respondent appeals from the Immigration Judge's December 7, 2018, order denying his request for a change in custody status. A December 19, 2018, bond memorandum sets forth the basis for that order. The Department of Homeland Security (DHS) has filed a motion for summary affirmance. The respondent's appeal will be sustained and the record will be remanded for further custody proceedings.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

An alien in a custody determination hearing conducted pursuant to section 236(a) of the Act, 8 U.S.C. § 1226(a), has the burden of establishing that he does not present a threat to persons or property. *See Matter of Siniauskas*, 27 I&N Dec. 207 (BIA 2018). Further, the alien bears the burden to establish that he or she does not present a flight risk if released on bond. *See Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006).


We will sustain the respondent's appeal of the Immigration Judge's determination that he did not meet his burden to establish that he does not present a danger to the community. The Immigration Judge noted the respondent's testimony that he has been present in the United States since 2010 (IJ at 2). The Immigration Judge denied bond in large part based on four convictions that the respondent incurred from 2014 to 2018 for driving without a license (IJ at 1-2). We appreciate the Immigration Judge's concerns about the respondent's conduct, however we disagree that these acts by themselves indicate that the respondent presents a danger to the community (IJ at 1). While the record reflects that the respondent received traffic warnings when he was stopped by police, it does not appear that he has been convicted of any moving violations.

Additionally, as it appears that the respondent was present in criminal court to address the charges, we do not conclude that these offenses indicate that the respondent presents a flight risk

such that no amount of bond will ensure his presence at future removal proceedings. While the prospect of relief from removal is a relevant factor in a bond determination (IJ at 2), we disagree that this factor alone establishes that the respondent presents a flight risk that may not be ameliorated by an appropriate bond.

For the foregoing reasons, we will sustain the respondent's appeal of the Immigration Judge's determination that the respondent presents a danger to the community. The record will be remanded for the Immigration Judge to determine an appropriate bond to ensure the respondent's continued presence throughout removal proceedings.

ORDER: The respondent's appeal is sustained and the record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion.



FOR THE BOARD