



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: M [REDACTED] Y [REDACTED], A [REDACTED]

A [REDACTED]-169

Date of this notice: 2/2/2018

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:
Adkins-Blanch, Charles K.
Grant, Edward R.
Malphrus, Garry D.

User team: Docket

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DA

Falls Church, Virginia 22041

File: [REDACTED] 169 – Los Angeles, CA

Date: **FEB – 2 2018**

In re: A [REDACTED] M [REDACTED] Y [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Monica E. Glicken, Esquire

APPLICATION: Change in custody status

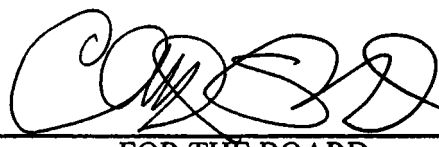
The respondent has appealed the Immigration Judge's October 23, 2017, bond order denying her request for a change in custody status. The record will be remanded.

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).

In a bond memorandum dated October 23, 2017, an Immigration Judge determined that he lacked jurisdiction to entertain the respondent's request for a change in custody status. The memorandum correctly notes that the Department of Homeland Security designated the respondent as an arriving alien on the Notice to Appear (Form I-862). The memorandum further cites our decision in *Matter of Oseiwusu*, 22 I&N Dec. 19 (BIA 1998), in support of the finding of a lack of jurisdiction over the the respondent's request for a change in custody status.

In *Matter of X-K-*, 23 I&N Dec. 731 (BIA 2005), we determined that an alien who is initially screened for expedited removal under section 235(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(1)(A), as a member of the class of aliens designated pursuant to the authority in section 235(b)(1)(A)(iii) of the Act, but who is subsequently placed in removal proceedings under section 240 of the Act, 8 U.S.C. § 1229a, following a positive credible fear determination, is eligible for a custody redetermination hearing before an Immigration Judge (subject to certain preclusions inapplicable here). The record reflects that the respondent was initially screened for expedited removal, but subsequently placed in removal proceedings under section 240 of the Act, following a positive credible fear determination. Thus, the Immigration Judge had, and retains, jurisdiction to entertain the respondent's request for a change in custody status. Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with this opinion, and for the entry of a new decision.



FOR THE BOARD

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
LOS ANGELES, CALIFORNIA**

File Number: A [REDACTED] 169

DETAINED

In the Matter of:

IN BOND PROCEEDINGS

M [REDACTED] Y [REDACTED],
A [REDACTED],

Respondent

ON BEHALF OF RESPONDENT:

Monica E. Glicken, Esquire
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Seal Beach, California 90740

ON BEHALF OF THE DEPARTMENT:

Assistant Chief Counsel
U.S. Department of Homeland Security
300 North Los Angeles Street, Eighth Floor
Los Angeles, California 90012

BOND MEMORANDUM AND ORDER OF THE IMMIGRATION JUDGE

I. Procedural History

Andrea Manrique Yaruro (Respondent) is a native and citizen of Colombia. On August 25, 2017, the U.S. Department of Homeland Security (Department) served Respondent with a Notice to Appear (NTA), therein charging her with inadmissibility pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA), as an alien not in possession of a valid immigrant visa, reentry permit, border crossing card, or other valid entry document. Jurisdiction vested and removal proceedings began when the Department filed the NTA with this Court on August 28, 2017. *See* 8 C.F.R. § 10013.14(a) (2015).

On September 13, 2017, the Court scheduled a custody redetermination in Respondent's case pursuant to section 236 of the INA. 8 C.F.R. § 1236.1(d). The Court found that it did not possess jurisdiction to grant bond and denied her request for a bond.

On October 13, 2017, Respondent appealed the Court's custody determination decision to the Board of Immigration Appeals (Board). The Court provides this Memorandum to facilitate review of Respondent's appeal. *See* Immigr. Ct. Prac. Man., Chap. 9.3(e)(vii) (April 11, 201).

An immigration judge is without jurisdiction to consider release under a bond for an arriving alien. *See* INA § 235(b)(2)(A); 8 C.F.R. § 1003.19(h)(2)(i)(B); *Matter of Oseiwusu*, 22 I&N Dec. 19, 19 (BIA 1998). Federal regulations define "arriving alien," *inter alia*, as "an applicant for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. § 1.2. Respondent is an arriving alien as defined by the regulations. On August 14, 2017, she arrived at a port of entry seeking admission to the United States. Thus, the Court is

without jurisdiction to conduct a bond redetermination hearing.

Accordingly, the Court entered the following order:

ORDER

IT IS HEREBY ORDERED that Respondent's request for custody redetermination be **DENIED**.

DATE: 10-23-17

A handwritten signature in black ink, appearing to read 'Nathan N. Aina', written over a horizontal line.

Nathan N. Aina
Immigration Judge