



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: W [REDACTED], D [REDACTED] M [REDACTED]**

**A [REDACTED]-837**

**Date of this notice: 8/20/2019**

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:  
Donovan, Teresa L.  
Noferi, Mark  
Wendtland, Linda S.

MalikAr  
Userteam: Docket

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*RC*

Falls Church, Virginia 22041

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File: A-██████-837<sup>1</sup> – Batavia, NY

Date:

AUG 20 2019

In re: D-██████ M-██████ W-██████ a.k.a. ██████████

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Robert F. Graziano, Esquire

APPLICATION: Redetermination of custody status

The respondent, a native and citizen of China, has appealed from the Immigration Judge's decision of February 13, 2019, to set no bond. The respondent's appeal will be sustained, and the record will be remanded to the Immigration Judge.<sup>2</sup>

On January 3, 2019, the U.S. District Court for the Western District of New York ordered that the respondent should be given a bond hearing within 14 days, given his lengthy immigration detention of over 2 years, and that the Department of Homeland Security (DHS) should carry the burden of proof by clear and convincing evidence, to show whether the respondent was a danger or flight risk such that no bond should be set (IJ Bond Mem. at 1).

On January 14, 2019, the Immigration Judge held an individualized bond hearing but denied bond because the Department of Homeland Security (DHS) had met its burden to show the respondent posed a severe risk of flight (IJ Bond Mem. at 1). On January 31, 2019, the United States Court of Appeals for the Second Circuit granted the respondent's petition for review, vacating our prior decision regarding the respondent's relief options. In February 2019, the respondent filed a motion to reconsider the bond decision, arguing that the grant of the petition for review constituted a material change in circumstances. The Immigration Judge reconsidered the issue, determined that the DHS had again met its burden to show the respondent was a flight risk, and denied bond (IJ Bond Mem. at 3). This appeal followed.

We acknowledge the Immigration Judge's reasoning. However, on the record before us, we conclude the evidence is insufficient to demonstrate, by clear and convincing evidence, that the respondent presents a flight risk so great that no bond should be set. The petition for review vacated our prior decision and the respondent is being considered for possible relief. He has lived in the United States for years, has a wife and child with lawful status, and has been detained for a lengthy period of time at cost to the taxpayer. However, we agree that the respondent's history of fraud and numerous A-numbers are negative factors which suggest a higher bond would be appropriate. Thus, we will remand the record to the Immigration Judge to set a bond amount that

<sup>1</sup> The respondent may have also used the following A-numbers: ██████████

<sup>2</sup> The respondent's request for oral argument is denied.

takes these factors into account. The Immigration Judge may also consider placing safeguards or conditions upon the respondent to ensure compliance.

Accordingly, the following order will be entered.

ORDER: The respondent's appeal is sustained, and the record is remanded to the Immigration Judge for the entry of a new decision.

*Teresa L. Danner*

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FOR THE BOARD