U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Goldberg, Julie A., Esq.
Goldberg & Associates
5586 Broadway
Third Floor
Bronx, NY 10463

DHS/ICE Office of Chief Counsel - NYD
201 Varick, Rm. 1130
New York, NY 10014

Name: R[redacted] A[redacted], I[redacted]

A [redacted]-111

Date of this notice: 10/19/2018

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:
Snow, Thomas G

Userteam: Docket

File: [redacted]111 – New York, NY Date: OCT 19 2018

In re: [redacted]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Julie A. Goldberg, Esquire

ON BEHALF OF DHS: Ryan Matsuno
Deputy Chief Counsel

APPLICATION: Change in custody status

This is an appeal by the Department of Homeland Security (DHS) from an Immigration Judge's December 7, 2017, bond order setting the respondent's bond at $7,500. A March 19, 2018, bond memorandum sets forth the basis for the Immigration Judge's order. The respondent did not file a response to the appeal. The appeal will be dismissed.

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).

The respondent's custody determination is governed by the provisions of section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a). An alien in a custody determination under this section must establish that he or she does not present a danger to persons or property, is not a threat to the national security, and does not pose a risk of flight. *See Matter of Guerra*, 24 I&N Dec. 37, 38-40 (BIA 2006); *Matter of Adeniji*, 22 I&N Dec. 1102, 1112-14 (BIA 1999); *see also* 8 C.F.R. § 1236.1(c)(8); *Matter of D-J-*, 23 I&N Dec. 572, 576 (A.G. 2003).

On appeal, the DHS argues that the Immigration Judge erred in finding that the respondent had met his burden of establishing that he does not present a danger to the community (DHS's Br. at 4-6). We acknowledge the DHS's cogent arguments. Nonetheless, we will affirm the Immigration Judge's determination (IJ bond memorandum at 2-3). While we do not condone the respondent's October 30, 2017 arrest, and December 1, 2017, conviction for aggravated driving while under the influence of alcohol (DWI) for which he was sentenced to 45 days of incarceration, we note that it is his only conviction since he arrived in the United States in 2001 (*Id.*). *Cf. Matter of Siniauskas*, 27 I&N Dec. 207, 209 (BIA 2018) (alien, who had a history of drinking and driving, had numerous driving under the influence convictions, including ones that involved accidents). The record does not indicate that the respondent's DWI conviction involved an injury to a person or damage to property. The Immigration Judge stated that he considers driving while under the influence to be a very serious offense and does not condone the respondent's actions. We share the Immigration Judge's concern. Yet considering the

respondent's one conviction during more than 14 years of residing in the United States, his acceptance of fault for his actions, his genuine remorse, evidence of his good character, and the lack of evidence of any attempts to flee prosecution, the Immigration Judge reasonably determined that on balance the respondent does not pose a danger to the community or a flight risk (IJ bond memorandum at 3). We will not disturb that conclusion.

We also will not disturb the Immigration Judge's determination that a $7,500 bond amount is sufficient to mitigate any flight risk that the respondent may pose (IJ bond memorandum at 3).

Accordingly, the following order will be entered.

ORDER: The DHS's appeal is dismissed.

FOR THE BOARD