



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Name: C [REDACTED]-V [REDACTED], V [REDACTED] ... A [REDACTED]-783

**Date of this notice: 1/15/2019**

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:  
Geller, Joan B  
Kelly, Edward F.  
Mann, Ana

User team: Docket

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Falls Church, Virginia 22041

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File: A [REDACTED]-783 – San Diego, CA

Date: JAN 15 2019

In re: V [REDACTED] C [REDACTED] -V [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Murray D. Hilts, Esquire

APPLICATION: Change in custody status

The respondent, a native and citizen of Mexico, appeals the bond decision of the Immigration Judge, dated September 4, 2018, which denied his request for release on bond. On September 24, 2018, a bond memorandum was provided to the parties explaining the reasons for the Immigration Judge's decision. The respondent's appeal will be sustained, and 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).

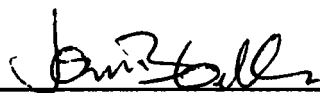
In the present matter, the respondent's custody determination is governed by the provisions of section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a). An alien in a custody determination under this section must establish that he does not present a danger to persons or property, is 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 (BIA 2006); *Matter of Adeniji*, 22 I&N Dec. 1102, 1112 (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).

The Immigration Judge determined that the respondent did not demonstrate that he does not pose a danger to the community (IJ Bond Memo at 2-3). The respondent argues the Immigration Judge erred in finding that he did not meet his burden of establishing that he does not present a danger to the community. We acknowledge the Immigration Judge's reasoning; however, on the record before us, we conclude that the respondent met his burden. While we do not condone the acts that led to the respondent's recent DUI conviction, we note that it is his only DUI conviction, and, in fact, his only criminal conviction during his 20 years of living in the United States (IJ Bond Memo at 3; Bond Exhs. 1-2). *Cf. Matter of Siniauskas*, 27 I&N Dec. 207 (BIA 2018) (alien, who had a history of drinking and driving, had numerous DUI convictions, including ones that involved accidents). We also note that the respondent did not receive any term of incarceration for his conviction, instead, he was sentenced to probation (IJ Bond Memo at 2-3; Bond Exhs. 1-2). Moreover, no evidence in the record indicates that the conviction involved injury to a person or damage to property.

In light of our determination regarding danger, we will remand the record to the Immigration Judge to determine whether the respondent poses a flight risk and, if applicable, to set a reasonable amount of bond to ensure his attendance at future immigration hearings. *See Matter of Guerra*, 24 I&N Dec. at 40 (regarding flight risk, the Immigration Judge may look at facts such as whether the alien has a fixed address, length of residence in the United States, family ties, potential eligibility for relief from removal, the recency and seriousness of his criminal activity, immigration history, and any attempts to flee prosecution). The parties may submit additional evidence on remand.

Accordingly, the following order will be entered.

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



FOR THE BOARD