



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: G [REDACTED] D [REDACTED], F [REDACTED] P [REDACTED]... A [REDACTED]-448

Date of this notice: 3/7/2019

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:
Kelly, Edward F.
Adkins-Blanch, Charles K.
Mann, Ana

USCIS
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Falls Church, Virginia 22041

File: [REDACTED]-448 – Atlanta, GA

Date: **MAR - 7 2019**

In re: F [REDACTED] P [REDACTED] E [REDACTED] G [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Shirley C. Zambrano, Esquire

APPLICATION: Redetermination of custody status

The respondent, a native and citizen of Panama, has appealed from the Immigration Judge's decision dated October 5, 2018, finding that the respondent presented a danger to the community and ordering her held on a "no bond" condition pursuant to section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a). The Department of Homeland Security has not responded to the respondent's appeal. The appeal will be sustained and the record will be remanded to the Immigration Judge.

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 under section 236(a) of the Act must establish to the satisfaction of the Immigration Judge and this Board 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 Adeniji*, 22 I&N Dec. 1102 (BIA 1999). An alien who presents a danger to persons or property should not be released during the pendency of proceedings to remove him or her from the United States. *See Matter of Urena*, 25 I&N Dec. 140 (BIA 2009); *Matter of Drysdale*, 20 I&N Dec. 815 (BIA 1994).

As the record establishes, the respondent has a criminal history that includes three arrests for disorderly conduct, two of which occurred in 2009, and the other in 2013; and a 2016 conviction for theft by shoplifting and possession of tools for the commission of the crime (IJ Bond Memo at 2). While we share the Immigration Judge's concern regarding the respondent's criminal record, we disagree with the Immigration Judge that such record alone establishes that the respondent is a danger to the community such that no bond is warranted. This is particularly true considering that the respondent's most recent offense occurred more than two years ago, was non-violent in nature, and no property damage is alleged to have occurred in the commission of the crime. Moreover, the record contains multiple persuasive letters from various persons in the respondent's community attesting to her good moral character (Respondent's Motion for Custody Redetermination Hearing, Tabs O-W). Accordingly, we cannot affirm the Immigration Judge's determination that the respondent poses a danger to the community. We will remand the record for the Immigration Judge to consider and make findings of fact as to whether the respondent poses a flight risk. *See Matter of Adeniji*, 22 I&N Dec. at 1113.

Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained.

FURTHER ORDER: The Immigration Judge's October 5, 2018, decision is vacated, and the record is remanded to the Immigration Judge for further proceedings consistent with the foregoing decision.



FOR THE BOARD