



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: E [REDACTED]-R [REDACTED], P [REDACTED]

A [REDACTED]-303

Date of this notice: 5/16/2018

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

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Falls Church, Virginia 22041

File: [REDACTED] 303 – Omaha, NE

Date: **MAY 16 2018**

In re: P [REDACTED] B [REDACTED] -R [REDACTED] a.k.a. [REDACTED] a.k.a. [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Derek L. Mitchell, Esquire

ON BEHALF OF DHS: Alexandra R. Tinkham
Assistant Chief Counsel

APPLICATION: Redetermination of custody status

This is an appeal by the Department of Homeland Security (DHS) from an Immigration Judge's January 4, 2018, bond order setting the respondent's bond at \$5,000. 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 (BIA 2006); *Matter of Adeniji*, 22 I&N Dec. 1102 (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. We acknowledge the DHS's arguments. Nonetheless, we will affirm the Immigration Judge's determination. While we do not condone the respondent's DUI conviction, we note that it is his only DUI conviction, in fact, his only conviction in his 32 years in the United States. *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). Moreover, as the Immigration Judge noted, the respondent's conviction did not involve injury to a person or damage to property. Accordingly, the following order will be entered.

ORDER: The DHS's appeal is dismissed.



FOR THE BOARD