



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

**Pina, Hugo Eloy
Law Offices of Hugo Pina
801 W. Nolana Ave.
Suite 100
McAllen, TX 78504**

**DHS/ICE Office of Chief Counsel - PSD
566 Veterans Drive
Pearsall, TX 78061**

Name: A [REDACTED]-R [REDACTED], V [REDACTED] ... A [REDACTED]-637

Date of this notice: 12/28/2018

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:
Greer, Anne J.
Adkins-Blanch, Charles K.
Morris, Daniel

U.S. Department of Justice
User team: Docket

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DM

Falls Church, Virginia 22041

File: [REDACTED]-637 – Pearsall, TX

Date: DEC 28 2018

In re: V [REDACTED] H [REDACTED] A [REDACTED] -R [REDACTED] a.k.a. [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Hugo E. Pina, Esquire

APPLICATION: Custody redetermination

The respondent, a native and citizen of Mexico, has appealed from the Immigration Judge's July 23, 2018, bond order. The Immigration Judge issued a bond memorandum setting forth the reasons for her bond determination on August 21, 2018. 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. *See* 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. *See* 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 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).

The Immigration Judge found that the respondent did not sustain his burden of proving that he did not pose a danger because his bond application omitted previous arrests or convictions, whereas he stated that he came into immigration custody after being detained by local law enforcement following a traffic stop. The Department of Homeland Security proffered that the respondent had been charged with five counts of fraudulent use or possession of identifying information. *See* Bond Memo. at 2. The respondent denied possessing fraudulent identification, but admitted that he gave a false name at the traffic stop because he was nervous. Based on the respondent's inability to give the court "clear information" about why he was stopped, and the fact that counsel "did not disclose [the respondent's] arrest in the bond application," the Immigration Judge concluded that the respondent failed to prove that he posed no danger (*Id.* at 2-3).

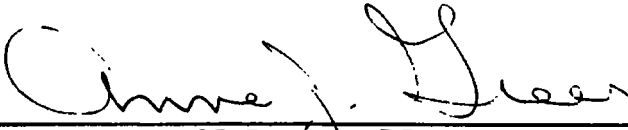
On appeal, the respondent argues that the Immigration Judge erred in finding that he did not meet his burden of establishing that he does not present a danger to the community. He denies being the subject of charges for possessing false identification documents, or any charges at all stemming from the traffic stop. *See* Respondent's Br. at 1-2. He also denies any prior convictions, and notes that he submitted evidence that he has lived in the United States for many years, has had

steady employment, and has paid taxes and supported his United States citizen children. *See id.* at 3-5.

We acknowledge the Immigration Judge's reasoning. However, this record does not contain evidence that the respondent is the subject of pending charges or prior criminal convictions. The Immigration Judge drew a negative inference from the fact that the respondent denied prior arrests in the bond application, but we are unconvinced that this factor is enough to support a decision to deny the respondent's request to redetermine his custody status based on his posing a danger to the community.

The Immigration Judge did not assess the respondent's flight risk. Accordingly, the record will be remanded for the Immigration Judge to reconsider the respondent's fitness for release from custody upon the imposition of reasonable bond. The following order is hereby 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