



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: V [REDACTED] A [REDACTED], L [REDACTED] Y [REDACTED]... A [REDACTED]-531

Date of this notice: 1/2/2020

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:
Mann, Ana
Kelly, Edward F.
Mullane, Hugh G.

User team: Docket

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RC

Falls Church, Virginia 22041

File: A-531 – Omaha, NE

Date:

JAN - 2 2020

In re: L-Y-V-A

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Raziel A. Argueta, Esquire

ON BEHALF OF DHS: Anna L. Speas
Assistant Chief Counsel

APPLICATION: Change in custody status

The respondent, a native and citizen of Mexico, has appealed the Immigration Judge's July 17, 2019, bond order. 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 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); *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 respondent argues that the Immigration Judge erred in finding that she had not met her burden with regard to danger. We acknowledge the Immigration Judge's reasoning and his concern regarding the circumstances of the respondent's arrest for child endangerment and neglect, as detailed in the August 23, 2019, bond memorandum. However, on the record before us, we will sustain the appeal. While we do not condone the respondent's behavior, we do not conclude that it supports a determination that she would be a danger if released on bond.¹ We note that the Department of Homeland Security, in its initial Notice of Custody Determination (DHS Form I-286), concluded that the respondent should be released from custody on a \$13,000 bond.

¹ We note that the public records of the Iowa court system appear to reflect that the charges stemming from the respondent's sole arrest were dismissed on December 2, 2019.

In light of our determination regarding danger, we will remand the record to the Immigration Judge to otherwise determine the respondent's eligibility for bond. The parties may submit additional evidence on remand.²

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

Board Member Hugh G. Mullane respectfully dissents without opinion.

² To the extent that the respondent has proffered new evidence on appeal, we review only the record that was before the Immigration Judge. *See Matter of Fedorenko*, 19 I&N Dec. 57, 74 (BIA 1984). The respondent may submit this evidence on remand.