



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: R [REDACTED], M [REDACTED]

A [REDACTED]-598

Date of this notice: 4/28/2020

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
Mullane, Hugh G.
Grant, Edward R.

User team: Docket

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Falls Church, Virginia 22041

File: A [REDACTED]-598 – Aurora, CO

Date:

APR 28 2020

In re: M [REDACTED] R [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Elsa D. Burchinow, Esquire

ON BEHALF OF DHS: Sunika Pawar
Assistant Chief Counsel

APPLICATION: Change in custody status

The respondent, a native and citizen of Bangladesh, has appealed from an Immigration Judge's September 6, 2019, decision denying his request for a change in custody status. The Department of Homeland Security (DHS) has moved for summary affirmance. The record will be remanded to the Immigration Judge for further proceedings consistent with this order and for the entry of a new decision.

On appeal, the respondent argues that the Immigration Judge violated his right to due process and a fair hearing by denying his request for a bond without any evidence to support her decision. The respondent further contends that the Immigration Judge erred in finding that he posed a threat to national security solely on the basis of statements made by the DHS that were unsupported by evidence.

Specifically, the respondent argues that the DHS did not offer evidence to support its assertion that the Liberal Democratic Party, the party to which the respondent claimed to belong, is a terrorist organization. While the respondent bears the burden of establishing that he is not a danger to the community or a flight risk, an Immigration Judge's determination that an individual poses a danger to the community must be based on probative evidence in the record.¹ See 8 C.F.R. § 1236.1(c)(8). The statements of the DHS attorney during the bond hearing in this case do not constitute evidence. See, e.g., *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980) (noting that counsel's statements in a motion are not evidence).

In determining whether an alien may be released on bond, an Immigration Judge may consider any evidence in the record that is probative and specific. *Matter of Fatahi*, 26 I&N Dec. 791, 794 (BIA 2016). The Immigration Judge may consider direct or circumstantial evidence and may make reasonable inferences. *Matter of Fatahi*, 26 I&N Dec. at 794-95. In this case, while the Immigration Judge found the respondent did not meet his burden of proof, the record contains

¹ Similarly, an Immigration Judge's determination that a respondent is not eligible for bond because he or she falls within the aliens described in section 236(c)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1226(c)(1), must be based on some type of evidence.

We therefore must remand the record to the Immigration Judge for further consideration of the respondent's request for a change in custody status, specifically, the Immigration Judge should address whether the respondent poses a danger to the community, considering all evidence of record, or whether he is a flight risk.

REMAIN
FOR THE BOARD