

## U.S. Department of Justice

**Executive Office for Immigration Review** 

Board of Immigration Appeals Office of the Clerk

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Date of this notice: 9/14/2018

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donne Carr

Donna Carr Chief Clerk

**Enclosure** 

Panel Members: Adkins-Blanch, Charles K. Kelly, Edward F. Snow, Thomas G

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Userteam: Docket

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## U.S. Department of Justice Executive Office for Immigration Review

Falls Church, Virginia 22041

File: -406 - Eloy, AZ

Date:

SEP 1 4 2018

In re: J Z -R

IN BOND PROCEEDINGS

**APPEAL** 

ON BEHALF OF RESPONDENT: Chukwuma A. Obiesie, Esquire

APPLICATION: Change in custody status

In a bond decision dated May 24, 2018, an Immigration Judge denied the respondent's request for a change in custody status and ordered that he remain held without bond. The bond order is accompanied by a June 25, 2018, explanatory memorandum. The respondent appealed from the May 2018 bond decision. The 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).

The Immigration Judge found that the respondent was ineligible for bond because he did not meet his burden to demonstrate that he did not pose a danger to the community under section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a). On March 27, 2018, the respondent was found removable as charged under section 237(a)(1)(B) of the Act, 8 U.S.C. § 1227(a)(1)(B). Subsequent to the Immigration Judge's May 2018 bond decision, on June 7, 2018, he was granted voluntary departure with an alternate order of removal to Mexico, after his application for cancellation of removal for nonpermanent residents was deemed abandoned. His appeal in the removal case is pending before the Board.

In determining that the respondent was a danger to the community, the Immigration Judge stated that he was a recidivist, noting that he had arrests for possession of a firearm by a prohibited person and for discharge of a firearm in the city limit. However, on appeal the respondent has provided evidence showing that no criminal complaint ever was filed against him concerning those charges arising out of a February 19, 2018, incident; that this was his sole arrest; and that he has no convictions. In light of the foregoing, we will not uphold the Immigration Judge's danger finding. The Immigration Judge did not evaluate the respondent's risk of flight.

<sup>&</sup>lt;sup>1</sup> As a result, the respondent's status under the Deferred Action for Childhood Arrivals (DACA) program and his employment authorization were reinstated and extended, and he also filed renewal applications.

Accordingly, we will sustain the appeal to reverse the danger finding and will remand the record in this bond case. On remand, the Immigration Judge should issue a new decision that contains a flight risk assessment including consideration of what bond amount, if any, is sufficient to ensure the respondent's appearance at upcoming removal proceedings.

ORDER: The appeal is sustained; the Immigration Judge's May 24, 2018, bond decision is vacated; and the record is remanded to the Immigration Court for further proceedings and for the issuance of a new bond decision, consistent with this opinion.

FOR THE BOARD