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

Leeds, Whitney Gold
Meyer Law Office, PC
PO Box 40394
Denver, CO 80204

DHS/ICE Office of Chief Counsel - AUR
12445 East Caley Avenue
Centennial, CO 80111-5663

Name: S[redacted]-R[redacted], J[redacted]

A[redacted]-568

Date of this notice: 5/25/2018

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:
Cole, Patricia A.

Userteam: Docket

File: [redacted] 568 – Aurora, CO Date: MAY 25 2018

In re: J[redacted] S[redacted]-R[redacted]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Whitney G. Leeds, Esquire

ON BEHALF OF DHS: Shana L. Martin
Assistant Chief Counsel

APPLICATION: Custody redetermination

The respondent is a native and citizen of Mexico. The Department of Homeland Security (DHS) appeals from the Immigration Judge's August 29, 2017, bond decision, memorialized in a written memorandum dated October 26, 2017, granting the respondent a $5,000 bond. The appeal will be dismissed.

This Board must defer to the Immigration Judge's factual findings, including findings as to the credibility of testimony, unless they are clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i); *see Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015). We review questions of law, discretion, and judgment de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

An alien such as the respondent in a custody determination under section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a), must establish to the satisfaction of the Immigration Judge and this Board that he 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).

Contrary to the DHS's arguments on appeal, we agree with the Immigration Judge that the respondent established that she does not present a danger to persons or property in the United States. The respondent was convicted of driving while ability impaired in violation of Colorado law in December 2014 and January 2016 (Motion for Custody Redetermination at Tab D). This Board has recently emphasized that driving under the influence is a significant adverse consideration in bond proceedings. *Matter of Siniauskas*, 27 I&N Dec. 207 (BIA 2018). While we do not wish to discount the dangerousness involved in the respondent's conduct, we agree with the Immigration Judge that the respondent's over 17-year residence in the United States, strong family ties, sole support of her 3 minor United States citizen children, longstanding employment as a daycare worker dedicated to providing for young children, and commitment to rehabilitation from alcohol abuse, support the finding that she does not pose a danger to the community. With regard to rehabilitation, the Immigration Judge found that before the respondent was detained in

this matter, she successfully passed 28 drug and alcohol tests over a 2 ½ year period and completed 24 hours of alcohol classes, 26 2-hour Track B therapy sessions, and 18 2-hour Track D therapy sessions (Bond Memo at 3). The Immigration Judge also found that the respondent was genuinely remorseful. *Id.* These factual findings, which are not clearly erroneous, support the Immigration Judge's decision in this matter.

On appeal, the DHS argues that the Immigration Judge impermissibly went behind the record of conviction and downplayed the 2016, conviction because it stemmed from an incident where the respondent was only sitting in a vehicle under the influence of alcohol, not actually driving (DHS's Br. at 5-6). However, while the Immigration Judge may have discussed this during the hearing, his written bond memorandum does not reflect any factual findings in this regard. The Immigration Judge properly considered both convictions to be significant factors in the dangerousness analysis.

We note, however, that both parties concede on appeal that the second conviction did not involve *driving* under the influence. While we have considered the DHS argument that the second conviction was a probation violation, we decline to disturb the Immigration Judge's decision in this matter that the respondent does not pose a danger to the community. Thus, we affirm the Immigration Judge's determination that the bond of $5,000 is appropriate to offset any risk presented. *See Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009) (only if an alien has established that he would not pose a danger to property or persons should an Immigration Judge decide the amount of bond necessary to ensure the alien's presence at proceedings).

Accordingly, the following order is entered.

ORDER: The DHS's appeal is dismissed.

FOR THE BOARD