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

Devine, Mark John
Law Office of Mark J Devine
679 St. Andrews Boulevard
Charleston, SC 29407

DHS/ICE Office of Chief Counsel - SDC
146 CCA Road, P.O.Box 248
Lumpkin, GA 31815

Name: S[redacted] A[redacted], J[redacted]

A [redacted]618

Date of this notice: 11/21/2017

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:
Malphrus, Garry D.
Mullane, Hugh G.
Greer, Anne J.

Userteam: Docket

File: [redacted] 618 – Lumpkin, GA

Date: NOV 21 2017

In re: J[redacted] S[redacted] A[redacted]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Mark J. Devine, Esquire

ON BEHALF OF DHS: Matthew E. Burns
Assistant Chief Counsel

APPLICATION: Custody redetermination

The respondent, a native and citizen of Mexico, appeals from an Immigration Judge's August 3, 2017, bond decision, memorialized in a written memorandum dated August 11, 2017. The appeal will be sustained, and the record will be remanded.

An alien such as the respondent in a custody determination under section 236(a) of the Immigration and Nationality Act 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). 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. *Matter of Urena*, 25 I&N Dec. 140 (BIA 2009).

There is no dispute that the respondent does not present a danger to persons or property of the United States and is not a threat to national security. Rather, the issue is whether the respondent is a flight risk and if so, whether he is entitled to bond to mitigate that risk.

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) (2017); *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).

Although we agree with the Immigration Judge that the respondent poses some flight risk, we disagree that no bond amount can mitigate such risk. The respondent has resided in the United States for approximately 20 years and has significant family ties to this country. Although he was arrested for driving under the influence, the charge was dismissed, and his only other offenses are minor traffic violations. He has a fixed address, and since 2015, he has worked as an electrician. He has also presented evidence that his Deferred Action for Childhood Arrivals (DACA) renewal is pending with U.S. Citizenship and Immigration Services. Under these circumstances, we will sustain the respondent's appeal and remand the record for the Immigration Judge to set a bond.

Accordingly, the following orders are entered.

ORDER: The respondent's appeal is sustained.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings and entry of a new decision.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
LUMPKIN, GEORGIA

IN THE MATTER OF:	)	**In Removal Proceedings**
	)	
S[redacted] A[redacted] J[redacted]	)	**File No. A [redacted]618**
	)	
Respondent	)	
	)	

APPLICATION: Bond Redetermination

APPEARANCES

ON BEHALF OF THE RESPONDENT:

Mark Devine, Esq.
Law Office of Mark J. Devine
679 St. Andrews Blvd.
Charleston, SC 29407

ON BEHALF OF THE GOVERNMENT:

Assistant Chief Counsel
Department of Homeland Security
146 CCA Road
Lumpkin, Georgia 31815

WRITTEN DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

Respondent is a male citizen and native of Mexico. Respondent entered the United States at or near unknown place, on or about unknown date. Respondent was not then admitted or paroled into the United States after inspection by an Immigration Officer. Respondent was placed into removal proceedings by the Department of Homeland Security ("DHS" or "Department") through the issuance of a Notice to Appear ("NTA") dated July 13, 2017.

The Department charged Respondent with removability under section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that Respondent is an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

On July 24, 2017, Respondent, through counsel,[1] filed a Motion for Bond. A bond hearing was held on August 3, 2017. The Court denied Respondent's request for a bond. Respondent has appealed the Court's decision to the Board of Immigration Appeals ("Board" or "BIA").

[1] Respondent was represented by counsel throughout custody proceedings.

II. DISCUSSION

A. Mandatory Detention

Section 236(c)(1) of the Immigration and Nationality Act ("Act" or "INA") provides that the Attorney General shall take into custody any alien who:

> (A) is inadmissible by reason of having committed any offense covered in INA § 212(a)(2);
> (B) is removable by reason of having committed any offense covered in INA §§ 237(a)(2)(A)(ii), (A)(iii), (B), (C), or (D);
> (C) is removable under INA § 237(a)(2)(A)(i) on the basis of an offense for which the alien has been sentence[d] to a term of imprisonment of at least one year; or
> (D) is inadmissible under INA § 212(a)(3)(B) or removable under INA § 237(a)(4)(B).

1. Respondent is not subject to mandatory detention.

The Department is not charging Respondent with removability on any of the bases that require mandatory detention under section 236(c)(1)of the Act; thus, the Court does not find that Respondent is subject to mandatory detention.

However, Respondent is subject to the provisions of section 236(a) of the Act, which provide that the Attorney General may, in his discretion, release a detained alien pending a final decision on removability. *See Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999). To qualify for release, the alien must establish that he or she is not a threat to the community or a flight risk. *See Matter of Drysdale*, 20 I&N Dec. 815–17 (BIA 1994); *see also Matter of Patel* 15 I&N Dec. 666 (BIA 1976). In making a determination regarding these issues, the court should consider the following nonexclusive factors: local family ties; length of residence in the community; prior arrests; convictions; record of appearances at hearings; employment history; membership in community organizations; manner of entry and length of time in the United States; immoral acts or participation in subversive activities; property or business ties; fixed address; availability and likelihood of relief; and, financial ability to post bond. *See Matter of Andrade*, 19 I&N Dec. 488, 489 (BIA 1987); *see also Matter of Khalifah*, 21 I&N Dec. 107 (BIA 1995); *see also Matter of Ellis*, 20 I&N Dec. 641 (BIA 1993); *see also Matter of P-C-M-*, 20 I&N Dec. 432, 434–35 (BIA 1991); *see also Matter of Shaw*, 17 I&N Dec. 177 (BIA 1979); *see also Matter of San Martin*, 15 I&N Dec. 167 (BIA 1974). In addition, a court may consider a respondent's character as one of the factors in determining the necessity for or the amount of the bond. *See Matter of Andrade*, 19 I&N Dec. at 489. Where an alien makes additional requests for a custody redetermination following an initial request, the request shall be considered only upon a showing that the alien's circumstances have changed materially since the prior bond redetermination. *See* 8 C.F.R. § 1003.19(e).

Aliens do not have the "right" to release on bond. *See Matter of D-J-*, 23 I&N Dec. 572, 575 (A.G. 2003) (citing *Carlson v. Landon*, 342 U.S. 524, 534 (1952)). An immigration judge's

decision whether to release an alien on bond requires an initial determination of whether the alien poses a danger to property or persons. *See Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009) ("Only if an alien demonstrates that he does not pose a danger to the community should an Immigration Judge continue to a determination regarding the extent of flight risk posed by the alien."). Pursuant to *Matter of Urena*, an alien must demonstrate that he or she does not pose a danger to the community before any release on bond may be considered. *See id.* And, if an immigration judge determines that an alien is a flight risk, he or she has the authority to decline setting a bond amount. *See Matter of D-J-*, 23 I&N Dec. at 584 (finding that the authority to remove aliens is meaningless without the authority to detain those who pose a danger or who are a flight risk during the process of determining whether they should be removed). Federal Regulations provide that an immigration judge's bond determination may be based on "any information that is available to the Immigration Judge or that is presented to him or her by the alien or the [DHS]." *See* 8 C.F.R. § 1003.19(d). Courts have consistently recognized that the Attorney General has extensive discretion when determining whether or not to release an alien on bond. *See id* at 576.

B. FINDINGS OF THE COURT

1. Respondent Cannot Show He is Not a Flight Risk.

Here, Respondent has not presented sufficient evidence that he is not a flight risk. *See Matter of Drysdale*, 20 I&N Dec. 815–17; *see also Matter of Patel* 15 I&N Dec. 666.

Respondent asserts that the court should grant him a bond because he is eligible for Deferred Action for Childhood Arrivals ("DACA"). While Respondent was granted DACA on March 21, 2013, it appears that he later failed to renew his status when it expired, and did not seek to renew his status until June 22, 2017. It also appears that Respondent was arrested for DUI in the past, though he was not convicted, as well as a small number of traffic offenses. *See* Exh. M. DACA, and the adjudication of applications for such, is not within this Court's jurisdiction. Accordingly, the Court will not venture a guess as to the validity of Respondent's claim for renewal.

Having resided in the United States since the age of three, Respondent may have a potential relief in the form of Cancellation of Removal for Certain Non-Permanent residents. Pursuant to section 240A(b)(1) of the Act, to establish eligibility for Cancellation B, an alien must establish that: (1) he or she has been continuously present in the United States for not less than ten years immediately preceding the date of such application; (2) he or she has been a person of good moral character during that period; (3) he or she has not been convicted of an offense under sections 212(a)(2), 237(a)(2), or 237(a)(3), subject to paragraph five, of the Act; and (4) his or her removal would result in exceptional and extremely unusual hardship to the alien's United States citizen or lawful permanent resident spouse, parent, or child. However, Respondent has not yet submitted an application for cancellation of removal, nor has he specified any qualifying relatives. As such, whether he would be eligible for such relief is highly speculative.

Respondent also asserts that he is not a flight risk because he has community ties in the United States through his two United States Citizen siblings, mother and father, and numerous cousins. Respondent had resided in the United States since the age of three. However, Respondent

has not presented any evidence that his father or mother have any legal status within the United States. While Respondent has resided in the United States for two decades and presents a fixed address, the Court finds that the length of Respondent's presence in the United States does not overcome the speculative nature of his relief at this time.

The Court finds that, given that Respondent neither had filed any application for potential relief available in front of this Court or submitted evidence of any hardship going to the speculative nature of relief, Respondent has not met his burden of proving that he is not a flight risk. *See Matter of Drysdale*, 20 I&N Dec. 815–17.

Accordingly, the Court enters the following order:

ORDER

It is ordered that:

Respondent's request for a bond redetermination shall be **DENIED.**

11 August 2017
Date

Honorable Dan Trimble
United States Immigration Judge
Lumpkin, Georgia