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]-S[redacted], A[redacted] **A [redacted]-161**

Date of this notice: 6/25/2020

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:
Creppy, Michael J.
Hunsucker, Keith
Malphrus, Garry D.

Userteam: Docket

File: A[redacted]161 – Chicago, IL

Date: JUN 25 2020

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

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Maria T. Baldini-Potermin, Esquire

ON BEHALF OF DHS: Erin O. Keeley
Assistant Chief Counsel

APPLICATION: Custody redetermination

The respondent, a native and citizen of Mexico, appeals the Immigration Judge's November 12, 2019, order denying his request for custody re-determination. The reasons for the Immigration Judge's order are set forth in a December 17, 2019, bond memorandum. The Department of Homeland Security (DHS) opposes the appeal.[1] The record will be remanded.

We review findings of fact by the Immigration Judge for clear error, while all other issues, including whether the parties have met the relevant burden of proof, are reviewed de novo. 8 C.F.R. §§ 1003.1(d)(3)(i)-(ii).

The Immigration Judge concluded that jurisdiction did not exist to consider the respondent's request for a change in custody status because the respondent is charged as an "arriving alien" in the August 2019, Additional Charges of Inadmissibility/Deportability (Form I-261) (IJ at 2-3). *See* 8 C.F.R. § 1003.19(h)(2)(i)(B). The respondent argues he is not properly classified as an "arriving alien." Based on the evidence in the record, we will remand the record for further development on this jurisdictional issue.

The following facts are not in dispute. The respondent applied for Deferred Action for Childhood Arrivals (DACA) status, and U. S. Citizenship and Immigration Services (USCIS) approved the application with validity from November 17, 2014, to November 16, 2016. The respondent thereafter applied for and was granted Advanced Parole by USCIS. On October 12, 2016, the respondent was paroled into the United States for the purposes of his DACA. The respondent again applied to renew his DACA status, which was approved by USCIS and valid until March 9, 2019. On June 7, 2019, the respondent was convicted of failure to file Internal Revenue Service Form 8300 in violation of 31 U.S.C. § 5324(b)(1).

[1] We grant the respondent's motion to accept reply brief, and we have considered the arguments raised in the respondent's reply brief.

The regulation contained at 8 C.F.R. § 1.2 states, in relevant part, that an alien "paroled into the United States ... pursuant to a grant of advance parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States, will not be treated, solely by reason of that grant of parole, as an arriving alien." *See also* 8 C.F.R. § 212.5(e)(2)(i) (stating that upon termination or revocation of a grant of parole, the alien's status reverts to the status which the alien had upon arrival). It thus appears that the respondent is not necessarily regarded as an "arriving alien" solely by virtue of parole into the United States if such entry was pursuant to a grant of advance parole as described above. In this regard, we note that *Matter of Oweiwusu*, 22 I&N Dec. 19 (BIA 1998), which addressed an alien who entered the United States pursuant to advance parole, was decided before the change in the regulatory definition of an "arriving alien" contained at 8 C.F.R. § 1.2, which was adopted as a final rule by the DHS and promulgated pursuant to the Immigration Benefits Business Transformation, Increment I, 76 Fed. Reg. 53764-01, 2011 WL 3793637 (Aug. 29, 2011).

In light of the foregoing discussion, we will remand the record for further custody proceedings, including a determination of whether it is "substantially unlikely" that the DHS will establish that the respondent is properly charged as an "arriving alien" such that he is ineligible for bond. *See Matter of Joseph*, 22 I&N Dec. 799 (BIA 1999). In remanding the case, we express no opinion as to the ultimate outcome of the case. Accordingly, the following order will be entered.

ORDER: The record is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

FOR THE BOARD