U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: H[redacted] R[redacted], J[redacted] **A [redacted]293**

Date of this notice: 9/26/2018

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:
Snow, Thomas G

SmithKi
Userteam: Docket

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File: [redacted]293 – Conroe, TX Date: SEP 26 2018

In re: J[redacted] H[redacted] R[redacted] a.k.a. [redacted]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Anwuli C. Keshi, Esquire

ON BEHALF OF DHS: Danielle E. Kosacci
Assistant Chief Counsel

APPLICATION: Change in custody status

This is an appeal by the Department of Homeland Security (DHS) from an Immigration Judge's June 19, 2017, bond order setting the respondent's bond at $10,000. The respondent filed a response in opposition to the appeal. The appeal will be dismissed.

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 respondent's custody determination is governed by the provisions of section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a). An alien in a custody determination under this section must establish that he or she 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 Guerra*, 24 I&N Dec. 37, 38-40 (BIA 2006); *Matter of Adeniji*, 22 I&N Dec. 1102, 1112-14 (BIA 1999); *see also* 8 C.F.R. § 1236.1(c)(8); *Matter of D-J-*, 23 I&N Dec. 572, 576 (A.G. 2003).

On appeal, the DHS argues that the Immigration Judge erred in finding that the respondent had met his burden of establishing that he does not present a danger to the community (DHS's Notice of Appeal). We acknowledge the DHS's cogent arguments. Nonetheless, we will affirm the Immigration Judge's determination (IJ memorandum at 2-3). While we do not condone the respondent's 2015 arrest and conviction for driving while intoxicated (DWI) for which he was sentenced to 3 days incarceration, we note that it is his only DWI conviction since he arrived in the United States in 2001 (*Id.*). *Cf. Matter of Siniauskas*, 27 I&N Dec. 207, 209 (BIA 2018) (alien, who had a history of drinking and driving, had numerous driving under the influence convictions, including ones that involved accidents). The record does not indicate that the respondent's DWI conviction involved an injury to a person or damage to property. The Immigration Judge noted that the alleged circumstances of the respondent's 2017 domestic violence conviction are troubling, but the respondent pled guilty to a misdemeanor. We share the Immigration Judge's concern. Yet considering the respondent's two convictions during his 17 years residing in the United States, and the lack of evidence of any attempts to flee prosecution, the Immigration Judge

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determined that, "on balance, it is reasonable to find that [the respondent] does not pose a danger to the community" (IJ Memorandum at 3). We will not disturb that conclusion.

We also will not disturb the Immigration Judge's determination that a $10,000 bond amount is sufficient to mitigate any flight risk that the respondent may pose (IJ Memorandum at 3).

Accordingly, the following order will be entered.

ORDER: The DHS's appeal is dismissed.

FOR THE BOARD

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