



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: S [REDACTED], W [REDACTED]

A [REDACTED]-991

Date of this notice: 9/28/2017

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

Sincerely,

Cynthia L. Crosby
Deputy Chief Clerk

Enclosure

Panel Members:
Grant, Edward R.

User team: Docket

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Falls Church, Virginia 22041

File: [REDACTED] 991 – Denver, CO

Date:

SEP 28 2017

In re: W [REDACTED] S [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jaspreet Singh, Esquire

ON BEHALF OF DHS: Marie Brown
Assistant Chief Counsel

APPLICATION: Change in custody status

The respondent appeals from a custody order dated May 18, 2017, denying his request for a change in custody status. The reasons for the Immigration Judge's custody order are set forth in a bond memorandum prepared on June 16, 2016. The Department of Homeland Security opposes the respondent's appeal. The record will be remanded.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i) (2017). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge denied the respondent's request for a change in custody status because he determined that the respondent presents a flight risk and a danger to the community (IJ at 4-5). The administrative records of this agency reflect that the respondent was granted relief from removal on August 21, 2017. We consider the grant of relief to constitute a changed circumstance that warrants reconsideration of the respondent's request for a change in custody status. See 8 C.F.R. § 1003.19(e).

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further consideration and for the entry of a new decision consistent with this order.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
DENVER, COLORADO (CIBOLA, NEW MEXICO DETAINED DOCKET)

In The Matter Of:

S [REDACTED], W [REDACTED]

Respondent.

File No.: [REDACTED] 991

Date: JUNE 16, 2017

In Bond Proceedings

ON BEHALF OF APPLICANT:

Jaspreet Singh
37-18 73 St.
Jackson Heights, NY 11372

ON BEHALF OF DEPARTMENT:

Marie Brown
Assistant Chief Counsel
Department of Homeland Security
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BOND MEMORANDUM

On May 18, 2017, I conducted a custody redetermination hearing in the above-captioned matter. The Department of Homeland Security (Department) had ordered the applicant held without bond. At the conclusion of the hearing, I found that the applicant had not carried his burden of showing that he is not a risk to national security, a danger to the community, or a flight risk; therefore, I ordered that he continue to be held without bond pending completion of his removal proceeding. Court records show that the applicant filed a timely Notice of Appeal of my decision, and I now issue this bond memorandum summarizing the record and setting forth the bases for my decision.

Summary of the Bond Record

The applicant recently entered the United States along the border with Mexico, was found to have a credible fear of persecution, and was issued a Notice to Appear in removal proceedings. On May 11, 2017, the applicant submitted his Motion for Bond Determination with attached exhibits. I marked those exhibits collectively as Bond Exhibit 1; that exhibit was admitted into the bond record without objection.

1. Documents relating to the applicant's sponsor and his willingness to support the applicant upon release.

Bond Exhibit 1 included various documents relating to the applicant's "sponsor" in the United States, Mr. Varinder Singh Itaan. In one of those documents, Varinder Singh Itaan states that the

applicant is his “family friend,” and he promises that he will “provide support for his necessities” if the applicant is released. Bond Exhibit 1 at 5. Varinder Singh Itaan attached his own identification documents—his Massachusetts driver’s license, the photo page of his U.S. passport, and his Certificate of Naturalization—to his statement. *Id.* at 6-7A. Varinder Singh Itaan also executed a Form I-134, Affidavit of Support, in favor of the applicant. *Id.* at 8-15. Finally, Varinder Singh Itaan included a copy of his Massachusetts motor vehicle fee invoice and his 2016 federal tax return to verify his residence and income. *Id.* at 16-19.

2. Documents relating to the applicant’s identity.

The applicant submitted the following documents to establish his identity and life history:

- A copy of his birth certificate from Bholath, Punjab, India. Bond Exhibit 1 at 19.
- A copy of his India passport photo/biographical pages. *Id.* at 20. The passport includes the following information:
 - Passport No.: K6637758
 - Place of Issue: JALANDHAR
 - Date of Issue:¹ 01/05/2013
 - Date of Expiry: 30/04/2023
 - Old Passport No. with Date and Place of Issue: H7883293; 04/03/2010; JALANDHAR
 - File No.: JA3070946142413 – OLD PASSPORT REPORTED LOST
- A copy of a document entitled “Unique Identification Authority of India” including the applicant’s photo and an “enrollment number.” *Id.* at 21.
- A copy of an “Indian Union Driving License, Govt of Punjab” bearing a photo of the applicant, his name, his father’s name, his residence, and his date of birth.
- 3. The applicant’s responses² to questions in court posed by the Court and Department counsel at his May 18, 2017 bond hearing.

In response to my questions, the applicant confirmed in a general manner the nature of his relationship to his “sponsor,” Varinder Singh Itaan as a “family friend,” stating that his own mother and Varinder Singh Itaan’s mother are friends. He stated that Varinder Singh Itaan is employed at a restaurant. Despite the fact that the alleged family friendship is predicated on the relationship between the applicant’s mother and Varinder Singh Itaan’s mother, the applicant was unable to identify the full name of Varinder Singh Itaan’s mother, stating that he knows her only by her nickname.

¹ The Court takes note of the fact that the standard Indian calendar format is DD/MM/YY; hence, “01/05/2013” refers to “May 1, 2013.”

² The applicant was not placed under oath for the custody redetermination hearing. The Court was assisted by a sworn telephonic Punjabi language interpreter during the course of the hearing.

[REDACTED]

I then ask the applicant whether he had his Indian passport in his possession; recall that he had offered into the bond record a copy of that passport's photo/biographical pages. He answered that he did not because the passport fell into a river while he was transiting through Panama on his way to the United States. He stated that he had made a copy of the passport before he left India, and that it was this copy (or, presumably, a copy of that copy) that he submitted to the Court. I then asked the applicant whether that passport—the one he had lost in a river in Panama—was the first passport he had ever had. The applicant answered that it was his first and only passport; I asked him whether he was sure of this, and he answered, "Yes." I then asked him why the copy of the passport that fell into the Panamanian river includes the note, "OLD PASSPORT REPORTED LOST." The applicant then contradicted his prior answer, stating that he had picked up a previous passport in India, but then it had been lost when it fell out of an envelope, or perhaps had had it stolen from that envelope, when he went to visit a shrine in India. He stated that this happened in "perhaps 2011." When I asked the applicant to explain why he had denied that he had ever had a passport prior to the one that fell into the river in Panama, the applicant stated that the old passport "had not come to mind" when I had asked him about any previously-issued passports.

Respondent stated that he had paid a smuggler "about fifteen thousand dollars" to pay for his transit from India, to Suriname, and then through Central America to the United States border. I asked the applicant whether he had been detained by immigration authorities in Panama. He stated that he had been. He told the Panamanian authorities that he is from Nepal because the Panamanians do not allow Indian nationals to stay. He was told to say this by persons arranging his transit. He provided the name of "Ladhi Rai" to the Panamanian authorities in conjunction with his claim to be Nepalese. He admitted that if he had had his Indian passport at the time Panamanian authorities encountered him, he would not have been able to convince them that he is from Nepal. He denied that anyone (including smugglers) had advised him to discard his passport to facilitate his travels northward through Panama.

In response to Department counsel's questions, the applicant stated that he had met his sponsor in India "two or three times." When Department counsel pointed out that upon apprehension by the Border Patrol the applicant had denied having any family or friends in the United States, the applicant first stated that he did not know English; he then stated that he had said this because his intention was to ask his family (in India) whether they knew anyone in the United States who could assist him.

Applicable Law

Respondent seeks release from the custody of the DHS during the pendency of removal proceedings. Section 236 of the Immigration and Nationality Act, as amended, provides general authority for the detention of aliens pending a decision on whether they should be removed from the United States. In the present matter, Respondent's custody determination is governed by the provisions of section 236(a) of the Act. An alien in a custody determination under that section must establish 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 Guerra*, 24 I&N Dec. 37 (BIA 2006); *Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999). An alien who presents a danger to

persons or property should not be released during the pendency of removal proceedings. *Guerra*, 24 I&N Dec. at 38, citing *Matter of Drysdale*, 20 I&N Dec. 815 (BIA 1994).

Findings of Fact and Conclusions of Law

Taking into account the full record of the custody redetermination proceeding (whether referred to above or not), I found that the applicant had failed to establish adequately his identity, the nature and extent of his travels (both *en route* to the United States culminating in his recent entry, and previously), and that he has a bona fide relationship with his sponsor, Varinder Singh Itaan. With respect to his identity and his travels, I found it significant that the applicant has on two occasions lost his passport. Of course, there is nothing inherently implausible about a person losing two passports over the course of six or more years. But here, the applicant's statement in court is contradicted by his own document submission. Specifically, the applicant denied that he had ever had a passport prior to the passport that he lost in a river in Panama; however, he had preserved the photo/biographical pages of that passport, which clearly states his prior passport had been "reported lost." I asked the applicant whether he was sure that he'd never had a prior passport, and he confirmed his initial answer. It was only when he was confronted with the clear notation on his more recent passport ("OLD PASSPORT REPORTED LOST") that the applicant stated that he recalled obtaining a prior passport and then losing it when he went to visit a religious site in India. I asked the applicant why he had denied—twice—that he'd had a prior passport, and his answer was simply that "it hadn't come to mind." I find his explanation that implausible, particularly since he provided significant detail (namely: he had just obtained the prior passport; he had it in an envelope; he visited the religious site with the passport in his possession; it then dropped out or was perhaps stolen at the religious site) when confronted with the clear statement included on his second/replacement passport. Similarly, in context I find that the applicant's statements regarding how he lost his second passport in Panama while crossing a river not worthy of belief. Respondent admitted that he was shortly thereafter encountered by Panamanian immigration officials, and that he (having been coached by his smugglers) told those officials that his name is "Ladhi Rai" and that he is from Nepal. The second "lost" passport facilitated his presentation of this story; if he had had his Indian passport on his person, the Panamanian immigration officials would no doubt have discovered that he is truly a citizen of India and not Nepal. I therefore find that the applicant misled that Court when he denied ever having a previous passport, and with that in mind his account of what turned out to be a fortuitous loss (because it facilitated the Nepal citizenship story) of his second passport is not credible.

The possible explanations for why the applicant would attempt to lose (or mislead the Court about a previous loss) his passports range from those that are suspicious (*e.g.*, was he trying to conceal prior foreign travels, including perhaps an extended stay in another country that could perhaps have implications on his anticipated asylum application?) to those that are downright sinister (*e.g.*, did he spend significant time in a country identified as a source of terrorism or other activities that are contrary to United States interests?). Here the Court's task was not to speculate on the applicant's motivations; it was to determine whether the applicant met his burden of proof of showing that his is not a risk to national security, a danger to the community, or a flight risk. And given the applicant's evasive testimony about his passport history

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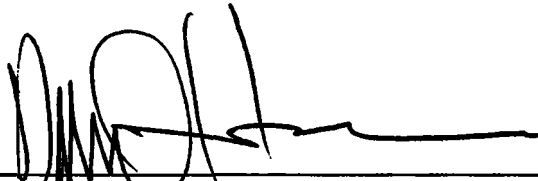
(culminating in his lie about never having had a prior passport) and his implausible account of how he lost his most recent passport, I conclude that he has failed to carry that burden. *See, e.g. Matter of Fatahi*, 26 I&N Dec. 791, 794 (BIA 2016) (upholding the Immigration Judge's finding of dangerousness based on the irregular manner in which the applicant for bond obtained his passport and the misrepresentations he made to the Department in that regard, noting that the applicant's explanations for how he obtained the passport were inconsistent). Moreover, the applicant's credibility is further undermined by his admission that he used a false identity (and country of nationality) in Panama after being coached on what to say by his smugglers. Given the applicant's evasive statements about his passport history and his false statement regarding having had a passport prior to the one he claimed to have lost in a Panamanian river, I conclude that he has failed to convince the Court that his current statements and documents in support of his release on bond are truthful and complete rather than a continuation of the directions he was provided by his smugglers in order to complete his journey to the United States.

Likewise, I found that the applicant failed to establish that he is not a significant flight risk. When questioned by Border Patrol agents upon his arrival, he disclaimed having any friends or relatives in the United States. I find that his initial explanation that the officers did not speak English is inadequate, given that he later stated in Court that he did not provide the name of his "family friend" because he was waiting for his parents in India to provide him with instructions on where he could go and with whom he could live. The applicant was unable to provide the full name of his sponsor's mother, even though it is through that mother that the "family friendship" is predicated. Rather, he could provide only her nickname. Given the applicant's statements that the family friendship was forged between his mother and his sponsor's mother in India, and given that he claimed to have met his sponsor on more than one occasion in India, I find the applicant's statements and other information unreliable, and I therefore conclude that he has not carried his burden of showing that he does not present a risk of flight if released on bond or other conditions.

ORDER

Based on the full record of the bond proceeding, and based on the findings of fact and conclusions of law discussed above, I found that the applicant had failed to show that he is not a potential danger to national security and that he is not a danger to the community of this country. Likewise, I found that he had not shown that he does not present a risk of flight if released. I therefore denied the applicant's request for a change in custody status pending completion of his removal proceeding.

JUNE 16, 2017


Donald O'Hare
Immigration Judge