



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

**Cardenas, Jr., Rudy
Cardenas & Fifield, APC
765 Broadway Street
EL Centro, CA 92243**

**DHS/ICE Office of Chief Counsel - IMP
1115 N. Imperial Ave.
El Centro, CA 92243**

Name: S [REDACTED], K [REDACTED]

A [REDACTED] 141

Date of this notice: 8/17/2017

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:
Greer, Anne J.
Adkins-Blanch, Charles K.
Malphrus, Garry D.

Userteam: Docket

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www.irac.net/unpublished/index

Falls Church, Virginia 22041

File: [REDACTED] 141 – Calexico, CA

Date:

In re: [REDACTED] S [REDACTED]

AUG 17 2017

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Rudy Cardenas, Jr., Esquire

APPLICATION: Change in custody status

The respondent, a native and citizen of India, appeals the bond decision of the Immigration Judge, dated February 28, 2017, denying his request for a redetermination of his custody status. The Immigration Judge issued a bond memorandum setting forth the reasons for his bond decision on April 14, 2017. The Immigration Judge found that the respondent had not met his burden of proving that he is not a danger to the community. On appeal, the respondent argues that the Immigration Judge erred in finding that he presents a danger to the community and that he should be allowed to be released on a \$10,000 bond without having to present a valid passport. The respondent's appeal will be sustained, and the record will be remanded to the Immigration Judge for further proceedings.


The Board reviews an Immigration Judge's findings of fact under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). The Board reviews questions of law, discretion, and judgment, and all other issues in appeals de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

An alien 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 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 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 proceedings to remove him or her from the United States. *See Matter of Urena*, 25 I&N Dec. 140 (BIA 2009).

We acknowledge that the respondent did not possess a passport at the time of his apprehension and he did not present a passport at his bond hearing. However, there is insufficient persuasive evidence contained in the record to establish that, if released from detention, the respondent would engage in behavior which poses a risk of harm to people or property within this country. In light of the foregoing, remanded proceedings are warranted for the Immigration Judge to further consider the respondent's request for a redetermination of his custody status. In particular, upon remand, the Immigration Judge should consider whether the respondent has established that he is not a flight risk. *See Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006). The parties may submit additional evidence on remand.

Accordingly, the following order will be entered.

ORDER: The respondent's appeal is sustained, and the record is remanded to the Immigration Judge for further proceedings consistent with the foregoing decision.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
2409 LA BRUCHERIE ROAD
IMPERIAL, CA 92251

Cardenas & Fifteth, APC
Cardenas, Jr., Rudy
765 Broadway Street
EL Centro, CA 92243

Date: Apr 17, 2017

File [REDACTED] 141

In the Matter of:

S [REDACTED], [REDACTED]

____ Attached is a copy of the written decision of the Immigration Judge. This decision is final unless an appeal is taken to the Board of Immigration Appeals. The enclosed copies of FORM EOIR 26, Notice of Appeal, and FORM EOIR 27, Notice of Entry as Attorney or Representative, properly executed, must be filed with the Board of Immigration Appeals on or before _____. The appeal must be accompanied by proof of paid fee (\$110.00).

____ Enclosed is a copy of the oral decision.

____ Enclosed is a transcript of the testimony of record.

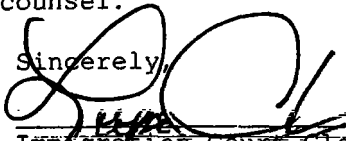
____ You are granted until _____ to submit a brief to this office in support of your appeal.

____ Opposing counsel is granted until _____ to submit a brief in opposition to the appeal.

☒ Enclosed is a copy of the order/decision of the Immigration Judge.

All papers filed with the Court shall be accompanied by proof of service upon opposing counsel.

Sincerely,



Immigration Court Clerk

UL

cc: DISTRICT COUNSEL
1115 N IMPERIAL AVE
EL CENTRO, CA 922430000

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
2409 La Brucherie Road
Imperial, California 92251**

File No.: [REDACTED] 141

Date: April 14, 2017

In the Matter of

IN BOND PROCEEDINGS

[REDACTED] S [REDACTED]

Respondent.

**ON BEHALF OF
THE RESPONDENT:**

**ON BEHALF OF THE DEPARTMENT
OF HOMELAND SECURITY:**

Rudy Cardenas, Jr., Esquire
765 Broadway Street
El Centro, California 92243

Counsel for the DHS
1115 N. Imperial Avenue
El Centro, California 92243

BOND MEMORANDUM OF THE IMMIGRATION JUDGE

On January 30, 2017, the Department of Homeland Security ("DHS") detained the respondent pursuant to its authority under section 236 of the Immigration and Nationality Act ("Act") and determined that he could be released under bond of \$3,500 if he submitted a valid, original passport. (Form I-286, Notice of Custody Determination.) The DHS personally served the respondent with a Notice to Appear ("NTA") on January 31, 2017, charging him as removable under section 212(a)(6)(A)(i) of the Act. (NTA.) The DHS filed the NTA with the Imperial, California Immigration Court on February 1, 2017, thereby vesting this Court with jurisdiction over these proceedings. (*Id.*); *see also* 8 C.F.R. §§ 1003.14, 1003.19 (2017).

The respondent sought redetermination of his custody status, and on February 28, 2017, the Court held a custody redetermination hearing. The Court determined that it had jurisdiction to re-determine the respondent's custody status pursuant to section 236(a) of the Act. During such hearing, the Court found that the respondent failed to meet his burden to show that he is not a danger and denied his request for a change in his custody status. (Order of the Immigration Judge, Feb. 28, 2017.) The Court has been informed that an appeal of its decision was filed with the Board of Immigration Appeals, and this memorandum explains the Court's decision to deny bond.

A respondent in a custody redetermination hearing under section 236(a) of the Act must establish to the satisfaction of the Immigration Judge that he or she does not present a danger to persons or property, is not a threat to national security, and does not pose a risk of flight. *See Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999). The Immigration Judge may consider various factors in determining whether a respondent merits release from custody, as well as the amount of bond that is appropriate, and may consider any evidence that is probative and specific. *Matter of Guerra*, 24 I&N Dec. 37, 40-41 (BIA 2006). The Immigration Judge has broad discretion in deciding which factors to consider in custody redeterminations, and may choose to give greater

weight to one factor over others, as long as the decision is reasonable. *Id.* These factors may include any or all of the following: (1) whether the respondent has a fixed address in the United States; (2) length of residence in the United States; (3) family ties in the United States, and whether they may entitle the respondent to reside permanently in the United States in the future; (4) employment history; (5) record of appearance in court; (6) criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) history of immigration violations; (8) any attempts to flee prosecution or otherwise escape from authorities; and (9) the manner of entry to the United States. *Id.* (citations omitted). Dangerous respondents are properly held without bond; the Immigration Judge should only determine a bond amount upon which the respondent may be released if he is not a danger to the community. *Id.* at 38; *see also Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009). A respondent who is likely to abscond is a poor bail risk and does not merit release on bond. *See id.* at 40.

The respondent is alleged to be 33 years old and married, with three children. (Form I-870, at 2; Form I-867A, at 2; Resp't's Sponsor Letter & Identity Docs., at 6-11.) The respondent provided several documents in support of his request purporting to be copies of: his 2008 school record; his voter identification card and his government identification; and a copy of a birth certificate translation with no accompanying birth certificate. (Resp't's Sponsor Letter & Identity Docs., at 6-11.) The respondent provided identity and financial documents for a sponsor with whom he proposed he could live if released from custody, along with a letter from the sponsor indicating his willingness to support the respondent. (*Id.* at 1-5.)

The circumstances presented to the Court regarding the respondent's arrival to the United States bore striking similarities to many of the facts presented to the Court in other cases in a relatively short period of time. The respondent claimed that he was a native and citizen of India who came to the United States for the first time in order to file for asylum. (*See* Form I-867A, at 2; Form I-867B.) The respondent did not, however, come to the port of entry and request asylum from immigration authorities there. (Form I-867A, at 2.) Rather, the respondent attempted to illegally enter the United States at a place not designated by the Attorney General in an apparent attempt to evade immigration authorities. (*Id.*) Only after apprehension did the respondent express a fear of returning to India. (*Id.*) The information presented at the respondent's hearing included that the respondent was apparently assisted by one or more smuggling organizations that facilitated his travel through multiple countries, possibly through the use of false documentation and different aliases. (*See* NTA; Form I-870, at 2.) These organizations seem to have advised the respondent regarding how to enter the country in order to avoid either detection or being charged as an arriving alien.

The respondent did not possess a passport at the time of his apprehension, notwithstanding his allegations of extensive, transcontinental travel. (*See* Form I-286, Notice of Custody Determination.) Additionally, the respondent initially stated that he had never used any other names, but later told the asylum officer that he had used the alias Kash Thapa. (*Compare* Form I-867A, at 1 with Form I-870 at 2; NTA.) The DHS determined the respondent could be released from custody upon a minimal bond based on apparent sponsor documentation, but such determination was conditional upon the respondent's presentation of his valid, original passport booklet. (Form I-286, Notice of Custody Determination.) The DHS appears to have had a legitimate interest in first reviewing the respondent's passport before releasing him from custody, in

order that it might alleviate its security concerns related to the respondent's identity, motivations for coming to the United States, and prior travel through or residence in other countries.

These concerns raised by the DHS relate to the Court's inquiry regarding danger, which it must consider as it reviews the respondent's custody status. The Court must first determine whether a respondent presents a danger to the community, and only upon finding that the respondent does not pose such a danger may the Court continue its determination regarding flight risk. *Urena*, 25 I&N Dec. at 140-141 (citing *Guerra*, 24 I&N Dec. at 38; *Matter of Drysdale*, 20 I&N Dec. 815, 817-818 (1994)). As the respondent bore the burden of proof in his custody redetermination hearing to demonstrate that he did not present a danger to the community or pose a flight risk, the Court gave him the opportunity to show that the DHS request for his original passport was unreasonable. See *Matter of Adeniji*, 22 I&N Dec. 1102. The respondent failed to explain why he did not have possession of his passport, which bore on his credibility to the Court. Although the respondent submitted copies of some identity documents to the Court ahead of his hearing, this documentation did not overcome the Court's concerns about his failure to initially present his passport. (See Resp't's Sponsor Letter & Identity Docs., at 6-11.)

The Court considered all of the evidence, information, and arguments presented by the parties. See *Guerra*, 24 I&N Dec. at 40. Based on the information before it, the Court found the respondent failed to meet his burden of showing he was not a danger to the community when he failed to show that the DHS request for his passport was unreasonable regarding his identity, motivations for arriving in the United States, and foreign travel and residence. See *Matter of Adeniji*, 22 I&N Dec. 1102. As the respondent failed to meet his burden on danger, the Court did not address flight risk. *Urena*, 25 I&N Dec. at 140-141. Accordingly, the Court denied the respondent's request for a change in his custody status. The Court informed the respondent of his rights to appeal and to file a written motion based on material, changed circumstances. 8 C.F.R. §§ 1003.38, 1003.19(e)-(f).


HENRY P. IPEMA
Immigration Judge

cc: Mr. Cardenas for the respondent.
Counsel for the DHS.

RE: S [REDACTED], K [REDACTED]

File: [REDACTED] 141

**** BOND MEMORANDUM OF THE IMMIGRATION JUDGE ****

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL ☒ (M) PERSONAL SERVICE ☒ (P)
TO: ☐ ALIEN ☐ ALIEN c/o Custodial Officer ☐ ALIEN's Att/REP ☐ DHS
DATE: 4/17/2017 BY: COURT STAFF ☒ (P)
Attachments: ☐ EOIR-33 ☐ EOIR 28 ☐ Legal Services List ☐ Other

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