



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: T [REDACTED] D [REDACTED] J [REDACTED] ... A [REDACTED]-333

Date of this notice: 1/9/2019

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:
Adkins-Blanch, Charles K.
Mann, Ana
Geller, Joan B

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Falls Church, Virginia 22041

File: A █████ -333 – New York, NY

Date:

JAN - 9 2019

In re: J █████ O █████ T █████ D █████

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Otilda I. Colon Pinilla, Esquire

APPLICATION: Change in custody status

The respondent, a native and citizen of Guatemala, has appealed the Immigration Judge's August 22, 2018, bond order. The Immigration Judge issued a bond memorandum setting forth the reasons for his bond determination on September 26, 2018. The Department of Homeland Security did not respond to the appeal. The appeal will be sustained and the record remanded.

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) (2017). 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).

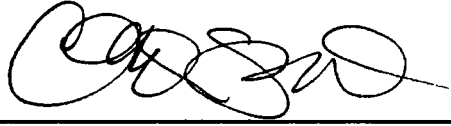
In the present matter, the respondent's custody determination is governed by the provisions of section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a). An alien in a custody determination under this section must establish that he or she does not present a danger to persons or property, 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, 40-41 (BIA 2006); *Matter of Adeniji*, 22 I&N Dec. 1102 (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 respondent argues that he adequately established that he does not present a danger to the community (Respondent's Br. at 5-10). While we do not condone the respondent's arrest record, we note that the respondent had been attending a substance abuse program prior to his detention (IJ at 3; Respondent's submission, Tabs F and G, Aug. 22, 2018). In addition, the respondent's fiancée attested to the willingness of his employer to drive the respondent to and from work if he is released (Respondent's submission, Tab A, Aug. 22, 2018). We conclude that the respondent's commitment to rehabilitation, as well as his plans to avoid driving, is sufficient to meet his burden of proof in this matter. *Cf. Matter of Siniauskas*, 27 I&N Dec. 207 (BIA 2018) (alien, who had a history of drinking and driving, had numerous DUI convictions, including ones that involved accidents). Accordingly, we shall sustain the respondent's appeal.

Given our determination regarding danger, we shall remand the record to the Immigration Court to provide the Immigration Judge with an opportunity to set a reasonable amount of bond. The parties may submit additional evidence upon remand. In view of the foregoing, the following orders will be entered.

ORDER: The respondent's appeal is sustained

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing decision.



FOR THE BOARD

Board Member Ana L. Mann respectfully dissents without opinion.