



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], G [REDACTED]

A [REDACTED]-503

Date of this notice: 12/12/2018

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:
Geller, Joan B
Snow, Thomas G
Mann, Ana

Userteam: Docket

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Falls Church, Virginia 22041

File: [REDACTED]-503 – Imperial, CA

Date: **DEC 12 2018**

In re: G [REDACTED] S [REDACTED]

IN BOND PROCEEDINGS

APPEAL

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

ON BEHALF OF DHS: Daniel F. Casillas
Assistant Chief Counsel

APPLICATION: Change in custody status

The respondent, a native and citizen of India, has appealed from the Immigration Judge's decision dated July 12, 2018. The Immigration Judge issued a bond memorandum and order on August 16, 2018, setting forth the reasons for the bond decision. The Department of Homeland Security (DHS) urges affirmance of the Immigration Judge's decision. The appeal will be sustained.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i); *Matter of S-H-*, 23 I&N Dec. 462, 464-65 (BIA 2002). The Board reviews 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 granted the respondent's request for a change in custody status, set bond at \$20,000, and required that the respondent produce and verify his passport as a condition of his release. The Immigration Judge also required that the respondent submit to any ATD measures that the DHS may choose to impose. The respondent argues on appeal that he is unable to produce his passport. He therefore seeks removal of the passport requirement as a condition of his release.

An alien in a custody determination under section 236(a) of the Act 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). The burden is on the alien to show that he or she merits release on bond. See 8 C.F.R. § 1003.19; 8 C.F.R. § 236.1(c)(8); *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). An Immigration Judge may properly consider any adverse information in assessing whether an alien's release on bond is warranted. See *Matter of Guerra*, 24 I&N Dec. at 40.

We conclude that the passport requirement should be removed as a condition of release. As noted above, the Immigration Judge required the production and verification of the respondent's passport as an additional measure to ensure the respondent's appearance at future hearings. The

respondent testified that his passport was stolen, and he provided evidence indicating that he is unable to obtain a new one without his physical presence. Although the respondent was unable to identify the individual who took his passport, he stated that he met the person through his smuggler. The respondent also submitted an affidavit from his father identifying the Indian agent that was used, specifying the agent's contact information, and noting that he had attempted to retrieve the respondent's passport from the agent but was told by the agent that he did not have the passport. The respondent's father also stated that he was unsuccessful in obtaining a duplicate copy of the respondent's passport without the respondent's presence. The respondent additionally submitted a website page from the Consular, Passport and Visa division of the Ministry of External Affairs, Government of India, outlining the physical presence requirement for the issuance of a passport. The documentary evidence was not specifically challenged by the DHS on appeal.

While the respondent may have provided vague testimony regarding the loss of his passport, we conclude that the documentary evidence presented was sufficient to establish that the passport cannot be produced as a condition of release. The respondent also presented other forms of identification to verify his identity, and he provided an affidavit of support from a United States citizen, along with financial information for the affiant, in support for his request for bond.

Based on the record in its entirety, we conclude that the respondent met his burden of establishing that the \$20,000 bond, along with any ATD measures that the DHS may choose to impose, would be sufficient to ensure his presence at future proceedings, without the requirement that he produce his Indian passport. *See Matter of Guerra*, 24 I&N Dec. at 40.

Accordingly, the following order will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: The requirement that the respondent produce his passport as a condition of his release is hereby vacated. The \$20,000 bond amount, along with any ATD measures that the DHS may choose to impose, remain in effect.



FOR THE BOARD