



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: A [REDACTED] C [REDACTED], R [REDACTED] A [REDACTED] ... A [REDACTED]-006

Date of this notice: 4/24/2019

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.
Kelly, Edward F.
Mann, Ana

Userteam: Docket

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OSY

Falls Church, Virginia 22041

File: A [REDACTED]-006 – Batavia, NY

Date: **APR 24 2019**

In re: R [REDACTED] A [REDACTED] A [REDACTED] C [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Xavier A. Palacios, Esquire

APPLICATION: Change in custody status

The respondent, a native and citizen of El Salvador, has appealed from the Immigration Judge's June 26, 2018, decision denying his request for a change in custody status. The Immigration Judge issued a bond memorandum and order on October 29, 2018, setting forth the reasons for the bond decision. The appeal will be sustained, and the record will be 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). 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 a custody determination under section 236(a) of the Immigration and Nationality Act, an alien must establish to the satisfaction of the Immigration Judge and this Board 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 Adeniji*, 22 I&N Dec. 1102 (BIA 1999). The burden is on the alien to show that he 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. In deciding whether to set a bond, an Immigration Judge should consider the nature and circumstances of the alien's criminal activity, including any arrests and convictions, to determine if the alien is a danger to the community, but family and community ties generally do not mitigate an alien's dangerousness. *Matter of Siniauskas*, 27 I&N Dec. 207 (BIA 2018).

The respondent was charged on April 22, 2018, of aggravated unlicensed operation of a motor vehicle, speeding, and unlawful possession of marijuana (IJ at 2; Respondent's Br. at iv; Tr. at 5, 7, 21; Traffic ticket, tab K, pg. 53-55). The Immigration Judge stated that the "conduct was dangerous to the public and showed a disregard for the welfare of others" (IJ at 2). The Immigration Judge found the respondent did not meet his burden to show that he is not a danger to the community given the nature, recency, and seriousness of the offenses (IJ at 2).

On appeal, the respondent argues that the Immigration Judge erred in finding that the respondent did not meet his burden of establishing that he does not present a danger to the community. We acknowledge the Immigration Judge's reasoning. However, upon review, we

conclude that the respondent has met his burden. The respondent's single traffic incident involving unlicensed vehicle operation, speeding ticket and marijuana simple possession do not rise to the level of dangerousness that precludes consideration of bond. *Cf. Matter of Siniauskas*, 27 I&N Dec. at 208, 210 (noting the dangerousness to the community of an alien with 4 DUI convictions, 3 accidents, and significant time served). We also note that the respondent did not receive any term of incarceration for his violations, and there is no evidence of any injury to a person or damage to property.

Given the foregoing evidence, we conclude that the respondent has met his burden of showing that he would not be a danger to persons or property in the United States if released from custody. We therefore will sustain the appeal and will remand the record to allow the Immigration Judge to determine whether the respondent has met his burden of showing that he would not be a flight risk if released or that a bond may be imposed in an amount to reasonably ensure his appearance in court.

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.



FOR THE BOARD