



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
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**Name: HUBBARD, CLAUDETTE COLLEN    A 030-085-111**

**Date of this notice: 10/8/2013**

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:  
Greer, Anne J.  
Miller, Neil P.  
Malphrus, Garry D.

TranC  
Userteam: Docket

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Falls Church, Virginia 22041

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File: A030 085 111 – San Francisco, CA

Date:

OCT 8 2013

In re: CLAUDETTE COLLEN HUBBARD a.k.a. Claudette Colleen Hubbard

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Holly S. Cooper, Esquire

APPLICATION: Redetermination of custody status

The respondent appeals from the Immigration Judge's May 2, 2013, decision denying her request for a redetermination of her custody status under section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a). The reasons for the Immigration Judge's decision are set forth in a bond memorandum dated May 28, 2013. The Immigration Judge found that the Department of Homeland Security (DHS) had demonstrated, by clear and convincing evidence, that the respondent was a significant flight risk. The Immigration Judge therefore denied the respondent's request for a redetermination of her custody status pursuant to *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008). The appeal will be sustained and the record remanded.

The Immigration Judge cited to *Singh v. Holder*, 638 F.3d 1196 (9th Cir. 2011), noting that the United States Court of Appeals for the Ninth Circuit had held that the burden of proof was on the DHS to establish, by clear and convincing evidence, that detention was warranted because the respondent is either a danger to the community or a flight risk. (I.J. at 2). The Immigration Judge concluded that the DHS had met its burden of demonstrating that continued detention is justified, stating that, given the respondent's lack of available relief from removal, her strong family ties, her fear of returning to Jamaica, and the posture of her case, she poses a flight risk. The respondent argues on appeal that, taking into consideration her positive factors, she does not present a risk of flight.

In making a determination under section 236(a) of the Act, the Immigration Judge is to weigh the positive and negative factors presented. See *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) (stating that the non-exhaustive factors an Immigration Judge may consider include whether the alien has a fixed address, his or her length of residence, family ties, employment history, record of appearance at court proceedings, criminal record—including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses, history of immigration violations, attempts to flee prosecution, and manner of entry into the United States).

The Immigration Judge applied the correct burden of proof in this case, but incorrectly applied the positive and negative factors in determining that the Government established, by clear and convincing evidence, that the flight risk posed by the respondent is such that, to ensure her appearance at future hearings, or for removal, continued detention is necessitated. One critical factor cited by the Immigration Judge was the fact that an alien with an order of removal

has less motivation to appear than an alien who potentially has immigration relief; the Immigration Judge noted that the respondent's claim for relief had been denied by the Immigration Court and the Board had affirmed. The Immigration Judge concluded that, "[g]iven the posture of [her] case, the respondent has no incentive whatsoever to return for removal." (I.J. at 4).

The docket record for the respondent's petition for review indicates, however, that the Attorney General filed an unopposed motion to remand the case. While in no sense dispositive, this is relevant. The Immigration Judge considered and discussed the respondent's criminal history. On remand this should be evaluated as to dangerousness.

On appeal, the respondent makes arguments regarding her length of residence in the United States, her history of appearances at hearings, her rehabilitation, the availability of both a fixed address with family and an employment opportunity, her strong family ties, and the support of family and friends. Although the Immigration Judge noted the respondent's strong family ties and her community ties, and, under most circumstances, these would be positive considerations, the Immigration Judge concluded that, with respect to the respondent, the extent of her community and family ties created a greater risk of flight (I.J. at 4).

We find remand necessary; the Immigration Judge should make further findings of fact, and reconsider the issue of flight risk in accordance with this decision and the standards set by the Ninth Circuit. Accordingly, the appeal will be sustained and the record remanded for further proceedings and the entry of a new decision on whether the DHS has met its burden of demonstrating, by clear and convincing evidence, that continued detention is justified. We would note that the respondent's limited availability of relief is not dispositive to the question of flight risk, and, if flight risk is established, the Immigration Judge shall consider whether such risk can be accounted for by setting of a bond in an amount sufficient to ensure the respondent's compliance with further orders pertaining to her removal proceedings. On remand, the parties will be afforded an opportunity to file briefs and evidence, and further testimony may be taken. We take no position on whether the respondent should be afforded bond in this case.

Accordingly, the following order will be issued.

**ORDER:** The appeal is sustained and the record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

  
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FOR THE BOARD