



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: D [REDACTED]-M [REDACTED], M [REDACTED]

A [REDACTED]-797

Date of this notice: 8/24/2020

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:
RILEY, KEVIN W.

Userteam: Docket

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U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A [REDACTED]-797 – Aurora, CO

Date: **AUG 24 2020**

In re: M [REDACTED] D [REDACTED]-M [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Skyler Austen Bentley, Esquire

ON BEHALF OF DHS: Marie Brown
Assistant Chief Counsel

APPLICATION: Change in custody status

The Department of Homeland Security (“DHS”) has appealed from the Immigration Judge’s December 4, 2019, discretionary determination that the respondent does not constitute a danger to the community. The Immigration Judge, therefore, ordered the respondent’s release on a \$7,000 cash bond while his collateral removal proceedings are resolved (IJ Bond Memo. at 1-3). For the following reasons, the DHS’s appeal will be dismissed.

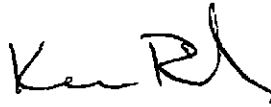
We review the Immigration Judge’s findings of fact, including credibility findings, under a “clearly erroneous” standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including whether the parties have met any applicable burden of proof and issues of discretion, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent’s custody redetermination 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 redetermination under this section must establish by clear and convincing evidence that he 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 8 C.F.R. § 1236.1(c)(8); *Matter of D-J-*, 23 I&N Dec. 572, 576 (A.G. 2003) *Matter of Adeniji*, 22 I&N Dec. 1102, 1113-15 (BIA 1999). “An Immigration Judge has broad discretion in deciding the factors that he or she may consider in custody redeterminations.” *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006).

We adopt and affirm the Immigration Judge’s December 4, 2019, decision. See *Matter of Burbano*, 22 I&N Dec. 872, 874 (BIA 1994). We agree with the DHS that the respondent’s October 3, 2019, arrest prior to the initiation of the removal proceedings is a significant adverse factor. However, the Immigration Judge gave this arrest appropriate consideration under the circumstances of this case, and he permissibly considered other factors such as the respondent’s overall record during his almost 20 year residence in the United States and evidence of rehabilitation and determined that the respondent met his burden to demonstrate he is not a danger to the community (IJ at 2-3).

Considering the entire record and for purposes of this appeal, we will affirm the Immigration Judge's order that the respondent be released on payment of \$7,000 bond. Accordingly, the following order will be entered.

ORDER: The DHS's appeal is dismissed.



FOR THE BOARD