



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Falls Church, Virginia 22041

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PO Box 410  
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**Name: D [REDACTED]-Z [REDACTED], A [REDACTED] A [REDACTED]... A [REDACTED]-819**

**Date of this notice: 3/19/2019**

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:  
Mann, Ana  
Kelly, Edward F.  
Adkins-Blanch, Charles K.

Humaydyl  
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

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File: A-819 – Jena, LA

Date:

**MAR 19 2019**

In re: A- A- D- -Z-

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Murray D. Hilts, Esquire

ON BEHALF OF DHS: Theresa L. Cummings  
Assistant Chief Counsel

APPLICATION: Change in custody status

The respondent, a native and citizen of Mexico, has appealed the Immigration Judge's October 5, 2018, bond order denying the respondent's request for a change in custody status. The Immigration Judge issued a bond memorandum setting forth the reasons for her bond determination on October 17, 2018. The respondent's 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 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 (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 the Immigration Judge erred in finding that the respondent did not meet his burden of establishing that he is not a flight risk and does not present a danger to the community. We acknowledge the Immigration Judge's reasoning. However, on the record before us, we conclude that the respondent has met his burden. With respect to the issue of danger, while we do not condone the respondent's sole conviction for driving under the influence, we note that it is his only criminal history in the United States. Moreover, the record does not reflect that the respondent's arrest involved injury to a person or damage to property. *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).

Furthermore, while we acknowledge the Immigration Judge's reasoning and agree that the respondent constitutes some risk of flight, we are not persuaded that no bond whatsoever should be available to the respondent. In this regard, we note that the respondent last entered the United States in 2003, and has 8 United States citizen children. The respondent asserts that upon release, he will live with his wife and children in the trailer home they recently purchased while pursuing his applications for relief.<sup>1</sup> Under these circumstances, we will remand the record for the Immigration Judge to set a reasonable bond for the respondent.

Accordingly, the following order will be entered.

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.

  
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FOR THE BOARD

<sup>1</sup> We note that the respondent has an appeal from the Immigration Judge's January 29, 2019, decision pending before this Board.