



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041

**Echevarria, Sandra  
Law Offices of Sandra Echevarria, P.A.  
14221 S.W. 120th Street  
Suite 221  
Miami, FL 33186**

**DHS/ICE Office of Chief Counsel - KRO  
18201 SW 12th St.  
Miami, FL 33194**

**Name: L [REDACTED] -P [REDACTED], R [REDACTED]**

**A [REDACTED] 958**

**Date of this notice: 10/12/2017**

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:  
Neal, David L

User team: Docket

For more unpublished BIA decisions, visit  
[www.irac.net/unpublished/index](http://www.irac.net/unpublished/index)

Falls Church, Virginia 22041

---

File: [REDACTED] 958 – Miami, FL

Date:

**OCT 12 2017**

In re: R [REDACTED] L [REDACTED] -P [REDACTED]

IN BOND PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Sandra Echevarria, Esquire

APPLICATION: Change of custody status

The respondent has appealed from the Immigration Judge's May 26, 2017, decision denying her request for release on bond. The reasons for the Immigration Judge's decision are set forth in a bond memorandum signed on May 26, 2017. The respondent has appended additional evidence to her appellate pleadings, which we construe as a motion to remand. The Department of Homeland Security has not responded to the appeal or the motion. The record will be remanded.

We review findings of fact, including credibility findings, for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, or judgment, and all other issues de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

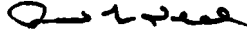
The respondent notes on appeal that an interpreter was not present at her bond hearing and that she was not able to testify as to whether she is a flight risk or presents a danger to persons or the community (Respondent's Br. at 7). We note that an Immigration Judge in bond proceedings may consider any evidence "that is probative and specific." *Matter of Guerra*, 24 I&N Dec. 37, 40-41 (BIA 2006). "The presence of a competent interpreter is important to the fundamental fairness of a hearing, if the alien cannot speak English fluently." *Matter of Tomas*, 19 I&N Dec. 464, 465 (BIA 1987) (citations omitted).

On appeal, the respondent acknowledges her conviction for driving under the influence (DUI), as well as her history of driving with a suspended or revoked driver's license. However, she contends that she would have testified about her rehabilitation after her DUI conviction and how she no longer consumes alcohol (Respondent's Br. at 7). We conclude that the respondent has demonstrated sufficient prejudice from the lack of interpreter at her bond hearing. *Alhuay v. U.S. Att'y Gen.*, 661 F.3d 534, 548-49 (11th Cir. 2011) (requiring a showing of prejudice when an interpreter is not present). We will remand the record to provide the respondent an opportunity to testify in support of her request for bond.

On remand, the parties shall have the opportunity to update the record with any relevant evidence. We express no opinion on the ultimate outcome of these bond proceedings.

Accordingly, the following order will be entered.

ORDER: The record is remanded for further proceedings consistent with this order and for the entry of a new decision.



FOR THE BOARD

**THE UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
KROME SERVICE PROCESSING CENTER  
MIAMI, FLORIDA**

**IN THE MATTER OF:**

**R [REDACTED] L [REDACTED] -P [REDACTED]  
[REDACTED] 1958**

**RESPONDENT**

**IN BOND PROCEEDINGS**

**APPLICATION: Bond Redetermination**

**ON BEHALF OF THE RESPONDENT**

Christopher Bryant, Esquire  
14331 S.W. 120 Street, Suite 221  
Miami, Florida 33186

**ON BEHALF OF DHS**

Jorge Pereira, Assistant Chief Counsel  
U.S. Department of Homeland Security  
18201 SW 12th Street  
Miami, Florida 33194

**WRITTEN DECISION AND ORDER**

**I. Procedural History**

On May 26, 2017, the Court entertained the Respondent's Motion Requesting a Bond hearing. The Motion was filed on May 19, 2017. The case originated at the Broward Transitional Center ("BTC"), however the Respondent was transported nonetheless to the Krome Service Processing Center ("KSPC") to address her request for a bond hearing. On May 26, 2017, the Respondent filed a Notice of Filing in Support of Bond. The Department of Homeland Security ("DHS") was served in open court that very day. The Court denied Respondent's request for bond on the same day. Respondent properly reserved appeal and thereafter appealed the Court's bond decision to the Board of Immigration Appeals (Board) due on June 26, 2017. Therefore, the Court will issue the following memorandum decision denying Respondent's request for bond.

**II. Findings of the Court**

Neither DHS nor Respondent claims that she is subject to mandatory detention under section 236(c)(1) of the Act. However, Respondent is subject to the provisions of section 236(a) of the Act, which provides that on a warrant issued by the Attorney General, an alien may be

arrested and detained pending a decision on whether the alien is to be removed from the United States. See § 236(a) of the Act. Pending such decision, the Attorney General may continue to detain the arrested alien and may release the alien on a bond of at least \$1,500 with security approved by, and containing conditions prescribed by, the Attorney General, or conditional parole. See id.; Matter of Joseph, 22 I&N Dec. 799 (BIA 1999). The determination of custody status or bond may be based upon any information that is available to the immigration judge or that is presented to him or her by the alien or DHS. See 8 C.F.R. § 1003.19(d).

The alien must demonstrate to the satisfaction of the immigration judge that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding. 8 C.F.R. § 1236.1(c)(8); see Matter of Guerra, 24 I&N Dec. 37, 38 (BIA 2006); Matter of Adeniji, 22 I&N Dec. 1102, 112-13 (BIA 1999); Matter of Drysdale, 20 I&N Dec. 815, 816-817 (BIA 1994); see also Matter of Patel, 15 I&N Dec. 666 (BIA 1976). An alien must demonstrate that she does not pose a danger to the community before the court can consider the extent of flight risk posed by the alien. See Matter of Urena, 25 I&N Dec. 140, 141 (BIA 2009). In making a determination regarding these issues, the court should consider the following nonexclusive factors: local family ties; length of residence in the community; prior arrests; convictions; record of appearances at hearings; employment history; membership in community organizations; manner of entry and length of time in the United States; immoral acts or participation in subversive activities; property or business ties; fixed address; availability and likelihood of relief; and financial ability to post bond. See Matter of Andrade, 19 I&N Dec. 488, 489 (BIA 1987); see also Matter of Khalifah, 21 I&N Dec. 107 (BIA 1995); Matter of Ellis, 20 I&N Dec. 641 (BIA 1993); Matter of P-C-M-, 201 I&N Dec. 432, 434-435 (BIA 1991); Matter of Shaw, 17 I&N Dec. 177, 178 (BIA 1979); see generally Matter of San Martin, 15 I&N Dec. 167 (BIA 1974). The Court may further consider a Respondent's character as one of the factors in determining the necessity for or the amount of the bond. See Andrade, 19 I&N Dec. at 489. Courts have consistently recognized that the immigration judge has extensive discretion when determining whether or not to release an alien on bond. See Matter of D-J-, 23 I&N Dec. 572, 576 (A.G. 2003).

In support of the bond request, the Respondent has presented evidence of an approved Petition for Alien Relative, Form I-130 filed by her United States citizen husband [REDACTED]. The Petition was filed on November 28, 2014. The Respondent also submitted a printout from the Hendry County Clerk of Courts wherein it provides that the Respondent was adjudicated guilty of Driving under the Influence (DUI) on June 4, 2015. The Respondent was also adjudicated guilty of Driving while License is suspended or revoked. She was placed on probation for six (6) months and charged with an assessment of \$1,198.00. Thereafter, the Respondent was arrested on April 10, 2017 for Driving while License suspended, revoked or subsequent offense. See Respondent's Notice of Filing. In the Emergency Motion Requesting Bond filed with the Court on May 19, 2017, the Respondent avers that she has been in the United States since 1999 and has a United States citizen husband and four United States citizen children. However no application for relief has been submitted. There is no evidence the Respondent could adjust her status in the United States or would be eligible for an I-601A waiver. The Motion provides "We are studying the different types of relief that may be available to the Respondent including but not

limited to Cancellation for Certain LPRs, Asylum, Withholding, and protection under the Convention against Torture.” See Motion. Page 5.

There is no evidence that the Respondent is a lawful permanent resident which in turn would make her eligible for 42A Cancellation of Removal to Certain Permanent Residents. Furthermore the Respondent if present in the United States since 1999 would be time-barred from prosecuting an application for asylum as there is no evidence that she filed an affirmative application within one (1) year of arrival. There is no evidence that she could overcome the exceptions either of changed country conditions or extraordinary circumstances pursuant to regulation.

Through counsel, the Respondent admitted that she does not own any property, has worked out of her home cooking meals, the children are in the custody of their father. One of the children, [REDACTED] was scheduled for a Tonsillectomy/Adenoidectomy on June 1, 2017 at Golisano Children’s Hospital of Southwest Florida. She filed a 1040 2016 Tax Return reflecting that she filed as herself, claiming one dependent Samantha Santamaria and reported wages of \$8,100.00 plus business income of \$1,890.00 for a total of \$9,990.00. Respondent’s recent convictions, particularly her DUI conviction, as well as the frequency and recency of her criminal acts lead the Court to find that she poses a danger to property or persons. See Andrade, 19 I&N Dec. at 489; Patel, 15 I&N Dec. at 667; San Martin, 15 I&N Dec. at 168-69.

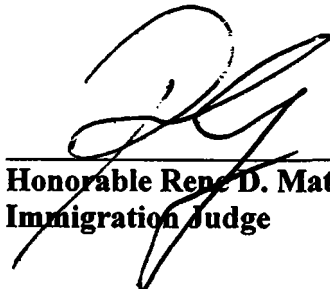
Consequently, no amount of bond can assuage the Court of its concerns in ensuring that Respondent will be present at future proceedings. See Andrade, 19 I&N Dec. at 489; Drysdale, 20 I&N Dec. at 818.

Giving due weight to the evidence in the record, the Court finds that Respondent has not met her burden of proof to show that her release would not pose a danger to the community or that she does not pose a flight risk. See Guerra, 24 I&N Dec. at 38; Adeniji, 22 I&N Dec. at 112-13. Accordingly, the following order will be entered:

**ORDER OF THE IMMIGRATION JUDGE**

**IT IS HEREBY ORDERED** that Respondent’s motion for bond is **DENIED**.

**DATED** this May 26, 2017.

  
\_\_\_\_\_  
Honorable Rene D. Mateo  
Immigration Judge

**APPEAL DUE: JUNE 26, 2017**