



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

**Cardenas Cruz, Alexander Gabriel
Barten Law P.C.
1212 McCormick Ave. Ste. 100
Ames, IA 50010**

**DHS/ICE Office of Chief Counsel - OMA
1717 Avenue H, Room 174
Omaha, NE 68110**

Name: G [REDACTED] V [REDACTED], F [REDACTED] ... A [REDACTED]-679

Date of this notice: 8/6/2020

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:
Gorman, Stephanie

Userteam: Docket

**For more unpublished decisions, visit
www.irac.net/unpublished/index**

RC

Falls Church, Virginia 22041

File: A [REDACTED]-679 – Omaha, NE

Date:

AUG - 6 2020

In re: F [REDACTED] J [REDACTED] G [REDACTED] V [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Alexander G. Cardenas Cruz, Esquire

ON BEHALF OF DHS: Brian E. Stransky
Assistant Chief Counsel

APPLICATION: Change in custody status

This is an appeal by the Department of Homeland Security (DHS) from an Immigration Judge's February 25, 2020, order granting the respondent's request for release from custody and setting the bond at \$3,000. The respondent has filed a brief opposing the appeal. The appeal will be dismissed.

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).

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 DHS argues, *inter alia*, that the Immigration Judge erred in finding that the respondent met his burden of establishing that he does not present a danger to the community (DHS Br. at 1-6). *See Matter of Siniauskas*, 27 I&N Dec. 207 (BIA 2018) (driving under the influence is a significant adverse consideration in determining whether an alien is a danger to the community in bond proceedings).

While we consider the respondent's conduct serious, as it is a single Operating While Under the Influence (OWI) arrest with charges still pending, his conduct does not rise to the level of *Matter of Siniauskas*, which involved multiple drunk driving arrests. As noted by the Immigration Judge in the March 6, 2020, bond memorandum, the respondent's OWI arrest is his only such arrest, and no accident was involved and so the Immigration Judge had a reasonable basis to conclude that the respondent does not pose a danger to the community (IJ at 1-4).

However, the respondent should consider himself warned that any further conduct which imperils public safety will be considered an indication that he disregards our laws and is a danger to the community.

Accordingly, the appeal will be dismissed.

ORDER: The Department of Homeland Security's appeal is dismissed.



FOR THE BOARD