

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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Name: A ■ A ■ ■ ■ ■ ■, H ■ ■ ■ ■ ■ ■

A ■ ■ ■ ■ ■ -215

Date of this notice: 8/8/2018

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

**Donna Carr
Chief Clerk**

Enclosure

**Panel Members:
Mann, Ana
Snow, Thomas G
Geller, Joan B**

Userteam: Docket

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Falls Church, Virginia 22041

File: [REDACTED] 215 – Omaha, NE

Date: AUG 08 2018

In re: H [REDACTED] A [REDACTED] A [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Kate O. Rahel, Esquire

ON BEHALF OF DHS: Joshua P. Sleper
Assistant Chief Counsel

APPLICATION: Change in custody status

The respondent, a native and citizen of Iraq, has appealed the Immigration Judge's April 17, 2018, order denying his request for a change in custody status. The Immigration Judge issued a written decision on May 18, 2018, setting forth the reasons for the bond decision. 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).

On February 2, 2018, the respondent was afforded a custody hearing pursuant to *Hamama v. Adducci*, 285 F. Supp. 3d 997 (E.D. Mich. 2018), at which the Immigration Judge denied the respondent's request for bond.¹ On March 5, 2018, an Immigration Judge granted his request to reopen his removal proceedings. On March 29, 2018, the respondent filed a Second Motion for Bond Determination. The Immigration Judge denied the request after concluding that the court was without jurisdiction under "the caveats listed in *Hamama* for a second bond hearing" (IJ at 3).

At page 4 of its January 19, 2018, Order Regarding Further Proceedings in the *Hamama* litigation, the United States District Court for the Eastern District of Michigan stated:

Detainees may seek a subsequent bond hearing if there has been a material change in their circumstances (e.g., their motion to reopen has been granted). Cf. 8 C.F.R. § 1003.19(e). The immigration court shall decide whether the circumstances merit such relief.

Given this explicit statement as to the right to seek a subsequent bond hearing if a class member's motion to reopen his removal proceedings has been granted, we disagree with the

¹ On May 17, 2018, the Board dismissed the respondent's appeal of the February 2, 2018, denial of his request for bond.

Immigration Judge's statement that he was without jurisdiction under the *Hamama* litigation to consider the respondent's Second Motion for Bond Redetermination following the grant of his motion to reopen his removal proceedings. We therefore will sustain the appeal and remand the record for the Immigration Judge to conduct a new bond hearing.

Accordingly, the following order will be entered.

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



FOR THE BOARD