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

SIDDIQUI, WAJID ALI
165 MCINTOSH PLACE DRIVE
FAYETTVILLE, GA 30214

DHS/ICE Office of Chief Counsel - ATL
180 Spring Street, Suite 332
Atlanta, GA 30303

Name: SIDDIQUI, WAJID ALI **A095-473-104**

Date of this notice: 4/26/2011

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:
Pauley, Roger

File: A095 473 104 - Atlanta, GA Date: APR 26 2011

In re: WAJID ALI SIDDIQUI

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Mary C. Lee
Assistant Chief Counsel

APPLICATION: Redetermination of custody status

The Department of Homeland Security (the DHS) has appealed from the Immigration Judge's November 29, 2010, decision. The Immigration Judge issued a bond decision on December 3, 2010, setting forth the reasons for the November 29, 2010, bond decision. The Immigration Judge, *inter alia*, found that the respondent did not present a danger to the community, but that, as he presented a risk of flight, granted the respondent's request for a redetermination of custody status and ordered him released under a bond in the amount of $25,000. On appeal, the DHS argues that the Immigration Judge erred as the respondent did not establish a material change in circumstances. After an initial bond redetermination, a request for a subsequent bond redetermination shall be made in writing and shall be considered only upon a showing that the alien's circumstances have changed materially since the prior bond redetermination. *See* 8 C.F.R. § 1003.19(e). While we are in agreement with the DHS that the fact that the respondent had been detained for some 2 months does not represent a change in circumstances, we agree with the Immigration Judge's conclusion that, as another alien in virtually the identical position as the respondent was released on bond, and the DHS did not appeal that matter, this established a material change in circumstances between the respondent's initial bond redetermination, and his subsequent request for a bond redetermination. Accordingly, the following order shall be issued.

ORDER: The DHS's appeal is dismissed.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
180 Spring Street, SW, Suite 241
Atlanta, Georgia 30303

IN THE MATTER OF:	)	**IN REMOVAL PROCEEDINGS**
	)	
	)	
SIDDIQUI, Wajid Ali	)	**A# 095-473-104**
	)	
	)	

APPLICATION: Bond Re-Determination
Motion to Reconsider

APPEARANCES

ON BEHALF OF THE RESPONDENT:
Charles Kuck, Esq.
Kuck Immigration Partners, LLC
8010 Roswell Road, Suite 300
Atlanta, Georgia 30350

ON BEHALF OF THE GOVERNMENT:
Mary Lee, Assistant District Counsel
Office of the Chief Counsel
Department of Homeland Security
180 Spring Street, SW, 3d Floor
Atlanta, Georgia 30303

DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. PROCEDURAL BACKGROUND

Respondent is a male native and citizen of Pakistan. Respondent was apprehended by the Department of Homeland Security ("Department" or "DHS"). He has apparently been detained since October 1, 2010.

On or about October 7, 2010, Respondent submitted a motion requesting to be released on bond. On October 13, 2010, the court denied Respondent's motion and Respondent appealed this decision to the Board of Immigration Appeals ("Board").

On November 18, 2010, Respondent filed the instant motion for release on bond, citing as changed circumstances, the fact that an individual tied to the same visa fraud/smuggling ring was released on bond. On November 29, 2010, the Court granted the motion and set bond at $25,000. On November 30, 2010, DHS filed a motion for reconsideration. As the court did not issue a written decision with its November 29, 2010 order, and in order to address DHS's motion for reconsideration, the court now enters the following decision:

II. DISCUSSION

The Act provides that the Attorney General shall take into custody any alien who

(A) is inadmissible by reason of having committed any offense covered in section 212(a)(2);
(B) is deportable by reason of having committed any offense covered in section 237(a)(2)(A)(ii), (A)(iii), (B), (C), or (D);
(C) is deportable under section 237(a)(2)(A)(i) on the basis of an offense for which the alien has been sentence to a term of imprisonment of at least 1 year; or
(D) is inadmissible under section 212(a)(3)(B) or deportable under section 237(a)(4)(B).

INA § 236(c)(1).

Respondent is not subject to mandatory detention under INA § 236(c)(1).

However, Respondent is also subject to the provisions of INA § 236(a), which provide that the Attorney General may, in his discretion, release a detained alien pending a final decision of ineligibility. Matter of Joseph, 22 I. & N. Dec. 799 (BIA 1999). To qualify for release, the alien must establish that he is not a threat to the community or a flight risk. Matter of Drysdale, 20 I. & N. Dec. 815, 816-817 (BIA 1994); see also Matter of Patel 15 I. & N. Dec. 666 (BIA 1976). 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. Matter of Andrade, 19 I. & N. Dec. 488, 489 (BIA 1987); Matter of San Martin, 15 I. & N. Dec. 167 (BIA 1974); Matter of Khalifah, 21 I. & N. Dec. 107 (BIA 1995); Matter of P-C-M-, 201 I. & N. Dec. 432, 434-435 (BIA 1991); Matter of Ellis, 20 I. & N. Dec. 641 (BIA 1993); Matter of Shaw, 17 I. & N. Dec. 177 (BIA 1979). In addition, the court may consider a respondent's character as one of the factors in determining the necessity for or the amount of the bond. Matter of Andrade, 19 I. & N. Dec. at 489.

At the hearing on November 29, 2010, DHS argued that Respondent failed to show that circumstances have changed materially since the prior bond redetermination. However, based on the fact that someone in virtually the identical position as Respondent was granted bond, which DHS did not appeal, and the fact that Respondent has been detained for approximately two months, the Court finds that Respondent has established changed circumstances. As the Court considered and rejected DHS's argument concerning changed circumstances at the hearing on November 29, 2010, the Court will deny DHS's motion for reconsideration.

At the November 29, 2010 hearing, DHS conceded that Respondent is not a danger to society. DHS seems to take the position that bond should be denied, as a matter of law, to anyone that is a flight risk. The Court disagrees with DHS's contention.

In the Court's view, there is a distinction between cases where a respondent is deemed to be a danger to society and cases where a respondent is a flight risk. In cases where the respondent is a danger to society, there is no amount of money that can ensure the safety of citizens and residents of the United States and therefore such individuals should not be released bond. However, where a respondent is flight risk, a significant monetary bond may be sufficient to ensure the respondent's appearance at future hearings. This case involves the latter situation.

The Court accepts DHS's position that Respondent is a flight risk. See DHS Motion for Reconsideration at 5. However, for reasons explained above, the Court rejects DHS's contention that Respondent "should remain detained." Id.

In this case, the Court has considered the various factors set forth by the BIA in Matter of Andrade and determines that Respondent should be released on bond of $25,000. In this regard, the Court notes that there is evidence showing that Respondent first entered the United States in 1996 and that he has no criminal convictions. Further, Respondent claims that he was a victim of fraud. In this regard, the Court notes that the indictment returned by the government alleges that the defendants required "alien applicants to apply their signatures to blank application forms before they were completed" and that the defendants completed the applications. The Court also notes that Respondent appears to have a fixed address and employment and property ties within the United States. The record also indicates that Respondent has one United States citizen child and therefore may be eligible for relief in the form of cancellation of removal.

The Court does not mean to minimize the allegations of fraud in this case. However, the Court routinely hears cases involving the type of fraudulent conduct alleged in the Notice to Appear and, in those cases, the respondents appear at their hearings even though they were never detained on bond. In fact, this past week, the Court heard a case involving facts virtually identical to those in this case, in that the respondent obtained a religious workers visa by fraud and criminal charges were brought against individuals who perpertrated the fraud. The respondent in the case from last week was never detained on bond and he appeared at all of his hearings.

The Court relied on a number of factors in setting bond at $25,000.00 in this case. Past experience shows that, in cases where detained aliens have relief available from removal and have no criminal conviction, DHS's office of Deportation and Removal ("D&R") officials generally set bond in the amount of $5,000 to $10,000. Because the relief available in this case requires Respondent to show that his removal would result in "exceptional and unusual hardship" to a qualifying relative, the Court set bond at an amount that is significantly higher than is normally set by D&R officials. The Court also considered the fact that bond was set at $15,000 for someone similarly situated as the Respondent. However, because this respondent appears to

have more financial resources, the Court finds that an amount greater than $15,000 is necessary to ensure Respondent's appearance at immigration proceedings. For reasons set forth above, the Court will set bond at $25,000.00

Accordingly, the court enters the following order:

ORDER

It is ordered that:

Respondent's Motion for bond be **GRANTED** and that Respondent be released from custody under bond of $25,000.00.

DHS's Motion for Reconsideration be **DENIED**.

12/3/10
Date

Earle B. Wilson
United States Immigration Judge
Atlanta, Georgia