U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: C[redacted] S[redacted], G[redacted] **A [redacted]-032**

Date of this notice: 4/30/2019

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:
Cole, Patricia A.
Greer, Anne J.
Wendtland, Linda S.

Userteam: Docket

File: A[redacted]-032 – New York, NY Date: APR 30 2019

In re: G[redacted] C[redacted] S[redacted] a.k.a. [redacted]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jennifer S. Echevarria, Esquire

APPLICATION: Redetermination of custody status

The respondent, a native and citizen of Mexico, is currently detained by the Department of Homeland Security during the pendency of removal proceedings. On October 4, 2018, an Immigration Judge denied the respondent's request for a change in custody status based on the conclusion that he did not demonstrate that he is not a danger to the community or that he poses a flight risk capable of being mitigated by bond. The respondent's appeal of this decision will be sustained and the record will be remanded.

This Board reviews the Immigration Judge's factual findings, including credibility findings and predictions as to the likelihood of future events, for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

An alien in a custody determination under section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a), must establish to the satisfaction of the Immigration Judge and this Board that he 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. *Matter of Adeniji*, 22 I&N Dec. 1102, 1111-12 (BIA 1999). An alien who presents a danger to persons or property should not be released during the pendency of proceedings. *Matter of Drysdale*, 20 I&N Dec. 815, 816-18 (BIA 1994). Only if an alien has established that he would not pose a danger to persons or property should an Immigration Judge decide the amount of bond necessary to ensure the alien's presence at proceedings to remove him from the United States. *Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009). In determining whether an alien presents a danger to the community and thus should not be released on bond pending removal proceedings, an Immigration Judge should consider both direct and circumstantial evidence of dangerousness. *Matter of Fatahi*, 26 I&N Dec. 791, 795 (BIA 2016).

The respondent argues that the Immigration Judge erroneously found that he did not demonstrate he is not a danger to the community on the basis of his July 8, 2018, arrest for driving under the influence of alcohol ("DUI") (IJ at 2-3; Exh. B3; Respondent's Br. at 8-10). We agree. Although we acknowledge the Immigration Judge's reasoning, on the record before us, we conclude that the respondent has met his burden. While we do not condone the respondent's recent arrest, it is the sole arrest reflected on his FBI "RAP sheet" despite the fact that the respondent has resided in this country for over 14 years (IJ at 3; Exh. B3). The record also does not show that the

respondent has yet been convicted of any criminal offense. Moreover, no evidence in the record indicates that injury to a person or damage to property occurred during the respondent's sole DUI offense (IJ at 2-3; Tr. at 18-22). *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). The respondent further has close family and community ties, and submitted multiple letters of support, including from his employer and church pastor (Exh. B1). For these reasons, we will reverse the Immigration Judge's holding that the respondent has not demonstrated that he is not a danger to the community. *See Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) (stating that an alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses is a factor for determining whether the alien merits release on bond).

Additionally, we agree with the respondent's argument that the Immigration Judge's flight ruling is erroneous (Respondent's Br. at 10). The record supports the Immigration Judge's determination that the respondent has long residence in this country, family ties including three United States citizen children, and a good record of employment and having paid taxes (IJ at 3-4; Exh. B1). *See id.* Furthermore, while the Immigration Judge found that the respondent did not establish prima facie eligibility for any form of relief from removal (IJ at 3), the administrative records of this agency show that he currently has an application for cancellation of removal pending before the Immigration Court. *See Matter of Andrade*, 19 I&N Dec. 488, 490 (BIA 1987) (stating that a respondent who is likely to be granted relief has a greater motivation to appear for removal than one who has less potential to obtain relief). Therefore, we will reverse the Immigration Judge's holding that the respondent has not shown that his flight risk may be mitigated by bond. *See Matter of Guerra*, 24 I&N Dec. at 40.

In light of our determinations, we will remand the record to the Immigration Judge to set a reasonable amount of bond. The parties may submit additional evidence and argument on remand.

Accordingly, the following order is entered.

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

FOR THE BOARD