



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: S [REDACTED], S [REDACTED]

A 2 [REDACTED]-871

Date of this notice: 7/31/2018

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:
Snow, Thomas G
Adkins-Blanch, Charles K.
Kelly, Edward F.

Userteam: Docket

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Falls Church, Virginia 22041

File: [REDACTED] 871 – Imperial, CA

Date:

JUL 31 2018

In re: S [REDACTED] S [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Matthew K. Borowski, Esquire

ON BEHALF OF DHS: Daniel F. Casillas
Assistant Chief Counsel

APPLICATION: Elimination of condition of bond

The respondent, a native and citizen of India, appeals from the Immigration Judge's April 5, 2018, bond order, which reduced the amount of bond from \$40,000 to \$15,000, but left in place all other conditions initially imposed by the Department of Homeland Security (DHS), including the presentation of his passport and electronic monitoring. The appeal will be sustained, and the record will be remanded to the Immigration Judge for further proceedings.

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). The Immigration Judge has the authority to place conditions on an alien's release from custody when setting a monetary bond. *Matter of Garcia-Garcia*, 25 J&N Dec. 93, 97 (BIA 2009).

The respondent concedes that the \$15,000 bond amount set by the Immigration Judge was reasonable (Brief at 2). However, the respondent contests the additional condition that he present his original passport prior to release. The respondent claims that his passport was taken from him during his journey through Latin America (Brief at 5).¹ Neither the transcript of the credible fear interview nor the Form 1-213, Record of Deportable/Inadmissible Alien indicate that the respondent has a passport. The Immigration Judge did not make a finding on whether the respondent's testimony was credible. If the respondent is not, in fact, able to produce or procure his passport, he cannot reasonably be expected to comply with the additional condition that he turn over his original passport. Thus, we conclude that, absent a finding that the respondent's

¹ He has submitted a photocopy of his passport that is in the record.

explanation for his inability to produce his original passport was not credible, the Immigration Judge erred in requiring this condition as a prerequisite for the respondent's release from custody.

In light of our determination, we will remand the record to the Immigration Judge for the entry of a new bond decision. The Immigration Judge may weigh the respondent's lack of a passport as a factor in determining whether the respondent may be released on bond and, if so, what bond amount would reasonably ensure his continued presence throughout removal proceedings. The parties may submit more evidence on remand. Accordingly, the following order will be entered.

ORDER: The respondent's appeal is sustained, and the record is remanded to the Immigration Judge for further proceedings consistent with this opinion.



FOR THE BOARD