



**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*

**Blackford, Brian J.  
Blackford Law LLC  
11711 Arbor Street, Suite 220  
Omaha, NE 68144**

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

**Name: M [REDACTED]-L [REDACTED], M [REDACTED]**

**A [REDACTED]-084**

**Date of this notice: 11/21/2019**

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:  
Kelly, Edward F.

Userteam: Docket

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*RL*

Falls Church, Virginia 22041

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File: A █████ -084 – Omaha, NE

Date: **NOV 21 2019**

In re: M █████ M █████ -L █████

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Brian J. Blackford, Esquire

ON BEHALF OF DHS: Alexandra R. Tinkham  
Assistant Chief Counsel

APPLICATION: Change in custody status

This is an appeal by the Department of Homeland Security (DHS) from an Immigration Judge's May 20, 2019, granting the respondent's request for release from custody and setting the bond at \$5,000. 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 2-3). As noted by the Immigration Judge in the July 8, 2019, bond memorandum, the respondent's Operating While Under the Influence (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 3-4). Accordingly, the appeal will be dismissed.

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

  
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FOR THE BOARD