



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*

**BARRON-VILLEDA, MIGUEL
A# 093-342-975
P.O. BOX 5010
OAKDALE, LA 71463**

**FEDERAL DET. CENTER-OAKDALE 2
P.O. Box 1128
OAKDALE, LA 71463**

Name: BARRON-VILLEDA, MIGUEL

A093-342-975

Date of this notice: 2/18/2011

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:

Cole, Patricia A.
Greer, Anne J.
Pauley, Roger

Immigrant & Refugee Appellate Center | www.irac.net

Falls Church, Virginia 22041

File: A093 342 975 - Oakdale, LA

Date: FEB 18 2011

In re: MIGUEL BARRON-VILLEDA

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Lorraine L. Griffin
Assistant Chief Counsel

APPLICATION: Redetermination of custody

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's bond decision dated October 27, 2010. The Immigration Judge issued a bond memorandum setting forth the reasons for the bond decision on November 29, 2010. The appeal will be sustained and the record will be remanded.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). The Board reviews questions of law, discretion, and judgment and all other issues in appeals from decisions of Immigration Judges *de novo*. 8 C.F.R. § 1003.1(d)(3)(ii); *Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008).

As background, the Department of Homeland Security ("the DHS") had set bond in the respondent's case at \$7,500. In response to the respondent's request for a bond redetermination, the Immigration Judge denied the request for bond because she found that the respondent had no children or family ties in the United States and no avenue to relief from removal; therefore, the Immigration Judge concluded that the respondent was a flight risk (I.J. at 2). On appeal, the respondent argues that he has several cousins and other relatives who are living legally in the United States and that he is the beneficiary of a pending "U" visa petition, which would provide him an immigrant visa in connection with assistance he provided to law enforcement in Arkansas who are investigating a homicide. The respondent requests remand so that a hearing can be held to determine whether he merits a discretionary bond pursuant to section 236(a) of the Immigration and Nationality Act. The DHS opposes the respondent's appeal.

The respondent's custody proceedings are governed by section 236(a) of the Act. *See Matter of Adeniji*, 22 I&N Dec. 1102, 1111-13 (BIA 1999). Therefore, the respondent bears the burden to show that he does not present a threat to the community and a risk of flight from further proceedings. *Id.* In interpreting whether an alien has met this burden, we have found that unless the alien demonstrates that he is not a danger to the community upon consideration of the relevant factors, he

should be detained in the custody of the DHS. *See Matter of Drysdale*, 20 I&N Dec. 815, 817 (BIA 1994). Only where the alien has proven that he is not a danger to the community does the likelihood that he will abscond become relevant. *Id.* Potentially dangerous aliens may be held in the custody of the DHS without bond during the pendency of removal proceedings. *See Carlson v. Landon*, 342 U.S. 524, 537-42 (1952).

Here, the Immigration Judge denied bond because she found that the respondent was “ineligible for any form of relief from removal” and because he had “no children and no family ties in the United States.” *See* I.J. at 2. While the respondent’s chances of relief may be limited, in light of the evidence of the pending visa petition, it is not correct to find that he has *no* prospects for relief from removal. Further, in light of the letters of support from family members living legally in the United States, it also does not appear correct to state that the respondent has no family here. These factors play a significant role in determining if the alien poses a flight risk and, accordingly, should be granted a specific bond. *Matter of Patel*, 15 I&N Dec. 666 (BIA 1976). The Immigration Judge should provide an on-the-record explanation of her weighing of these facts, and thereafter address the respondent’s risk of flight and whether there is a bond amount likely to cause him to appear for future removal proceedings. *Matter of Patel*, *supra*.

Accordingly, the following orders will be entered.

ORDER: The respondent’s appeal is sustained.

FURTHER ORDER: The record is remanded for further proceedings consistent with this order.


FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1900 EAST WHATLEY ROAD
OAKDALE, LA 71463

BARRON-VILLEDA, MIGUEL
OAKDALE FDC - 41455-265 P.O. BOX 5010
OAKDALE, LA 71463

Date: Nov 29, 2010

File A093-342-975

In the Matter of:
BARRON-VILLEDA, MIGUEL

____ Attached is a copy of the written decision of the Immigration Judge. This decision is final unless an appeal is taken to the Board of Immigration Appeals. The enclosed copies of FORM EOIR 26, Notice of Appeal, and FORM EOIR 27, Notice of Entry as Attorney or Representative, properly executed, must be filed with the Board of Immigration Appeals on or before _____. The appeal must be accompanied by proof of paid fee (\$110.00).

____ Enclosed is a copy of the oral decision.

____ Enclosed is a transcript of the testimony of record.


____ You are granted until _____ to submit a brief to this office in support of your appeal.

____ Opposing counsel is granted until _____ to submit a brief in opposition to the appeal.

✓ _____ Enclosed is a copy of the order/decision of the Immigration Judge.

All papers filed with the Court shall be accompanied by proof of service upon opposing counsel.

Sincerely,



Immigration Court Clerk

UL

cc: DHS/ICE
Office of Chief Counsel
1010 E. Whatley Road
Oakdale, LA 71463

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
OAKDALE, LOUISIANA**

IN THE MATTER OF)	IN BOND PROCEEDINGS
)	
Miguel BARRON-VILLEDA)	File No.: A93-342-975
)	
Respondent)	
_____)	

MOTION: Motion for Bond Reconsideration

ON BEHALF OF RESPONDENT:
Pro se

ON BEHALF OF THE DEPARTMENT:
Assistant Chief Counsel
DHS/ICE/Litigation Unit
1010 E. Whatley Road
Oakdale, LA 71463

ORDER OF THE IMMIGRATION JUDGE

The Respondent is a native and citizen of Mexico. On August 12, 2010, the Department of Homeland Security - Bureau of Immigration and Customs Enforcement ("DHS") issued a Notice to Appear ("NTA") alleging that the Respondent entered the United States on an unknown date without being admitted or paroled after inspection by an immigration officer. Based on these allegations, the DHS charged the Respondent as inadmissible pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended.

When DHS took the Respondent into custody, it determined that he should be released under bond amount of \$7500.00. The Respondent now requests that this Court conduct a subsequent bond redetermination hearing.

The determination of whether an alien should be detained or required to post a bond is a two step process: 1.) Does he pose a danger to the persons or property in his community, and 2.) Is he a flight risk unlikely to appear for further proceedings. 8 C.F.R. § 236.1(c)(8); Matter of Adeniji, 22 I&N Dec. 1102 (BIA 1999); Matter of Drysdale, 20 I&N Dec. 815 (BIA 1994). Until the alien satisfies these two factors, there is a presumption for detention. In determining whether the alien has successfully rebutted the presumption, such factors as seriousness of the crime committed, prior criminal history, sentences

imposed and time served, nonappearance at court proceedings, probation history, evidence of rehabilitative effort or recidivism shall be considered. See Matter of San Martin, 15 I&N Dec. 167 (BIA 1974); Matter of Patel, 15 I&N Dec. 666 (BIA 1976); Adeniji, 22 I&N Dec. 1102.

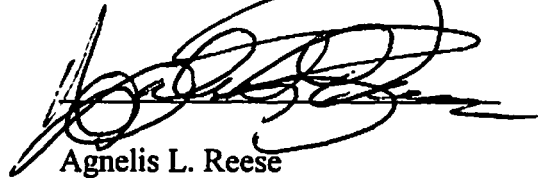
If the respondent does rebut the presumption of detention, then in determining the necessity for and the amount of bond, such factors as a stable employment history, the length of residence in the community, the existence of family ties, equities in the United States, availability of relief from removal and the likelihood of it being granted, a record of nonappearance at court proceedings, manner of entry, and evidence of serious criminal conduct or immigration law violations may be considered. Matter of Urena, 25, I&N Dec. 140 (BIA 2009); Matter of Guerra, 24 I&N Dec. 37, 40 (BIA 2006); Matter of Andrade, 19 I&N Dec. 488, 489 (BIA 1987); Adeniji, 22 I&N Dec. 1102; Patel, 15 I&N Dec. at 666. An Immigration Judge has broad discretion in deciding the factors that may be considered in determining the amount of bond. See Guerra, 24 I&N Dec. at 40.

This Court has determined that the Respondent has not rebut the presumption of detention. He is unmarried, has no children and no family ties in the United States. He entered the United States without inspection only three years ago. Most importantly, the Respondent appears ineligible for any form of relief from removal. Based on this information, this Court determines that the Respondent is a flight risk and orders the Respondent detained at no bond.

Accordingly, the following order shall be entered:

ORDER: IT IS HEREBY ORDERED THAT the Respondent remain detained at NO BOND.

11/29/10
Date


Agnelis L. Reese
Immigration Judge