



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: E [REDACTED] N [REDACTED], O [REDACTED]

A [REDACTED]-401

Date of this notice: 11/26/2018

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

Userteam: Docket

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Falls Church, Virginia 22041

File: A [REDACTED]-401 –Houston, TX

Date:

NOV 26 2018

In re: O [REDACTED] B [REDACTED] N [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Octavio M. Rivera, Esquire

ON BEHALF OF DHS: Warren Eth
Assistant Chief Counsel

APPLICATION: Change in custody status

The Department of Homeland Security (DHS) has appealed the Immigration Judge's August 27, 2018, order granting the respondent's request for a change in custody status and setting a bond in the amount of \$12,000. A September 6, 2018, bond memorandum sets forth the basis for the Immigration Judge's order. The DHS's 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).

An alien in a custody determination hearing conducted pursuant to section 236(a) of the Act, 8 U.S.C. § 1226(a), has the burden of establishing that he does not present a threat to persons or property. *Matter of Urena*, 25 I&N Dec. 140 (BIA 2009). An Immigration Judge has wide discretion in considering factors in making a bond determination. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006).

We will affirm the Immigration Judge's bond decision. The respondent was arrested in March 2018 for driving while intoxicated with a child passenger in violation of Texas Penal Code § 49.045 and was convicted of this offense in June 2018. The Immigration Judge found this to be a serious offense and a significant adverse consideration (IJ at 5). See *Matter of Siniauskas*, 27 I&N Dec. 207 (BIA 2018). However, the Immigration Judge concluded that the respondent was nevertheless able to meet his burden to show that he does not present a danger to the community (IJ at 3). The Immigration Judge properly considered the circumstances of the respondent's offense. See *id.* at 208-09. The Immigration Judge credited the respondent's testimony that he had been at a family reunion with his wife and children, eaten dinner, played sports, and consumed four beers (IJ at 3). The Immigration Judge noted that the respondent did not have a prior criminal record (IJ at 6). Evidence that the respondent was pulled over for a non-functioning license plate light and that his blood alcohol concentration was measured at .089 was also considered (IJ at 3; Bond Exs. 3, 5). The Immigration Judge made a finding that the respondent's offense constitutes an isolated incident that will not be repeated (IJ at 6). After

consideration of these factors, the Immigration Judge concluded that the respondent met his burden of proof to establish that he does not present a danger to the community if released on bond. *Cf. Matter of Urena*. While it presents a close question, we are not persuaded that the Immigration Judge erred in this determination. Accordingly, the following order will be entered.¹

ORDER: The DHS's appeal is dismissed.



FOR THE BOARD

¹ The Immigration Judge concluded that a \$12,000 bond is sufficient to ensure the respondent's presence throughout removal proceedings. The parties have not appealed the bond amount set.