



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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Name: L [REDACTED] -T [REDACTED], E [REDACTED] D [REDACTED] A [REDACTED] -573

Date of this notice: 11/28/2018

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:
Morris, Daniel
Mullane, Hugh G.
Creppy, Michael J.

CilbeauR
Userteam: Docket

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Donna Carr

Falls Church, Virginia 22041

File: A █████ -573 – Adelanto, CA

Date:

NOV 28 2018

In re: E █████ D █████ L █████ -T █████

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Camila L. Alvarez, Esquire

ON BEHALF OF DHS: Devin Garcia
Assistant Chief Counsel

APPLICATION: Subsequent custody redetermination; reopening

The Department of Homeland Security (DHS) appeals from the Immigration Judge's March 29, 2018, decision denying its motion to reopen and/or motion for a subsequent custody redetermination. The rationale for this decision is contained in a bond memorandum dated May 18, 2018. The appeal will be dismissed.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review 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).

On March 9, 2018, the Immigration Judge granted the respondent's request to be released from custody. The DHS did not appeal this decision. Instead, on March 16, 2018, the DHS filed a "Motion for Bond Redetermination" seeking to present additional evidence regarding the circumstances of the respondent's criminal history. The DHS requested in its motion that the Immigration Court either conduct a subsequent bond determination pursuant to 8 C.F.R. § 1003.19(e) or reopen the existing bond determination pursuant to 8 C.F.R. § 1003.23(b)(3).

The Immigration Judge properly denied the DHS's motion. First, the subsequent bond redetermination hearing authorized by 8 C.F.R. § 1003.19(e) is not applicable here. This regulation authorizes a subsequent bond redetermination at "an alien's request" provided that the alien "show[s] that [his] circumstances have changed materially since the prior bond redetermination." 8 C.F.R. § 1003.19(e). As the unambiguous language is limited to requests made by an alien, we find no basis to extend this authority to requests made by the DHS.¹ See *Matter of Castro-Tum*, 27 I&N Dec. 271, 292 (A.G. 2018) ("[I]mmigration judges and the Board . . . act on behalf of the Attorney General in adjudicating immigration cases, and can exercise only the specific powers that statutes or the Attorney General delegate.").

¹ Whereas the regulations authorize an alien to seek redetermination of a denial of bond, the regulations authorize the DHS to rearrest an alien following a grant of bond. See 8 C.F.R. § 236.1(c)(9); *Matter of Sugay*, 17 I&N Dec. 637 (BIA 1981) (decided under former analogous 8 C.F.R. § 242.2(c)).

We also affirm the Immigration Judge's determination that reopening is not warranted under 8 C.F.R. § 1003.23(b)(3). The DHS seeks reopening on the basis of a police report pertaining to an aspect of the respondent's criminal history that was discussed during the prior bond proceedings (Mot., Attach.; Bond Memo at 2). While we recognize the DHS's assertion that it had difficulty obtaining the police report during the prior bond proceedings, there is no indication that the DHS was precluded from otherwise examining the circumstances surrounding the respondent's criminal history. We agree with the Immigration Judge that reopening should not be used as a means to relitigate an issue that could have been, and indeed was, fully explored during prior proceedings.² See 8 C.F.R. § 1003.23(b)(3) ("The Immigration Judge has discretion to deny a motion to reopen even if the moving party has established a prima facie case for relief."); *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189 (BIA 2018) ("[I]t would further strain the limited resources of our already overburdened Immigration Court system to remand a case to develop a claim that could have been raised previously.").

For the reasons, we affirm the Immigration Judge's decision. Accordingly, the following order will be entered.

ORDER: The DHS's appeal is dismissed.



FOR THE BOARD

² We decline to reach the DHS's contentions of error regarding the Immigration Judge's March 9, 2018, grant of bond (DHS's Br. at 5; see Respondent's Br. at 6-8). The DHS did not appeal that decision.