



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: NAVA, EDGAR DANIEL

A099-317-368

Date of this notice: 3/30/2012

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:

Grant, Edward R.
Greer, Anne J.
Miller, Neil P.

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Falls Church, Virginia 22041

File: A099 317 368 - Lancaster, CA

Date:

MAR 30 2012

In re: EDGAR DANIEL NAVA a.k.a. Edgar Daniel Nava-Cortes a.k.a. Edgar Nava Cortes

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Andrew Knapp, Esquire

APPLICATION: Redetermination of custody status

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's October 25, 2011, bond decision, which set forth the reasons for the decision. The Immigration Judge, after finding that the respondent was not a danger to the community to the extent that he should be denied bond, and that he was not a significant flight risk, set a bond of \$20,000 pursuant to section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a). On appeal, the respondent argues, citing to *Doan v. INS*, 311 F.3d 1160, 1162 (9th Cir. 2002), that the bond amount is unreasonable because he does not have the financial means to afford the current amount. He asserts that the Immigration Judge also erred by not allowing his mother to testify as to her indigence. The appeal will be sustained, and the respondent will be ordered released from custody upon posting a bond in the amount of \$7,500.

This matter is governed by *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008), the United States Court of Appeals for the Ninth Circuit decision which vested Immigration Judges with authority to review, under the discretionary provisions at section 236(a) of the Act, the custody status of those aliens facing prolonged immigration detention after a petition for review has been filed with the Ninth Circuit. Thus, the Immigration Judge must conduct an individualized determination as to whether an alien who seeks a change in custody status is a threat to national security, a danger to the community at large, likely to abscond, or otherwise a poor bail risk. See *Matter of Patel*, 15 I&N Dec. 666 (BIA 1976).

The Department of Homeland Security (DHS) had the burden of proof to establish, by clear and convincing evidence, that the respondent constitutes a danger to society or a flight risk as well as in determining the appropriate bond amount. The Immigration Judge found that the respondent had 2008 convictions for possession of brass knuckles and possession of a switchblade, a 2009 conviction for vandalism and, most recently, a conviction for joyriding. He noted that the respondent also had four convictions for driving without a license. The Immigration Judge expressed concern about the seriousness of the respondent's criminal record but noted that he had never been arrested or convicted of a violent offense, concluding that he was not a danger to the community to the extent that he should be denied bond.

The Immigration Judge further found that the respondent had no record of attempting to flee prosecution, had strong ties to the community, had lived in the United States since the age of 7, and, as he had a possibility of prevailing before the Ninth Circuit, may be eligible for relief from removal.

The Immigration Judge also found that, if released, he would live with his lawful permanent resident mother, who assured the Immigration Judge that the respondent would appear at all future proceedings. The Immigration Judge concluded that the respondent was not a significant flight risk.

We would first note that the respondent does not dispute any of the Immigration Judge's findings. Rather, he argues that the Immigration Judge erred by not allowing his mother to testify, and by imposing a bond in an amount he is unable to afford. We find the respondent's contention that, because he does not have the money to satisfy the bond condition, the bond amount of \$20,000 is unreasonable, to be without a legal basis. The purpose of bond is not to purchase freedom but rather to provide assurance of appearance after release. See *United States v. Melville*, 309 F. Supp. 824 (D.C.N.Y. 1970). The test for determining excessiveness of bail is not whether a respondent is financially capable of posting bail but whether the amount of bail is reasonably calculated to assure the respondent's appearance for future proceedings or, if necessary, for deportation. See generally *United States v. Soto Rivera*, 581 F. Supp. 561 (D. Puerto Rico 1984). As for the respondent's citation to *Doan v. INS*, *supra*, the court did note that serious questions may arise concerning the reasonableness of the amount of the bond if it has the effect of preventing an alien's release. However, this observation was *dicta* as the court's holding did not deal with the reasonableness of the amount of the bond but addressed the question of whether the INS (now DHS) could impose bond upon a removable alien as a condition of release, upon expiration of the six-month period for detaining him once removal was no longer reasonably foreseeable.

As for his contention that the Immigration Judge erred by not allowing testimony from his mother, the respondent has indicated on appeal that his mother was precluded from presenting testimony to the Immigration Judge that she was only able to afford a bond of \$1,500. However, such testimony would not have been relevant as the test for determining excessiveness of bail is not whether a respondent is financially capable of posting bail. Nonetheless, in light of the Immigration Judge's finding that the respondent does not pose a significant flight risk as well as his numerous positive equities, we conclude that a \$7,500 bond is sufficient to ensure the respondent's presence at future proceedings.

The following orders shall be issued.

ORDER: The respondent's bond appeal is sustained.

FURTHER ORDER: The Immigration Judge's decision is vacated and the respondent is ordered released from custody upon posting a bond in the amount of \$7,500.



FOR THE BOARD