



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Falls Church, Virginia 22041

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**Name: A [REDACTED] C [REDACTED], J [REDACTED] ... A [REDACTED]-660**

**Date of this notice: 7/2/2019**

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:  
Liebmann, Beth S.

Userteam: Docket

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Falls Church, Virginia 22041

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File: A [REDACTED]-660 – Omaha, NE

Date: JUL - 2 2019

In re: J [REDACTED] C [REDACTED] A [REDACTED] C [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: John Alan Hathaway, Esquire

ON BEHALF OF DHS: Anna L. Speas  
Assistant Chief Counsel

APPLICATION: Redetermination of custody status

The Department of Homeland Security (DHS) has appealed from the Immigration Judge's November 28, 2018, bond decision. The Immigration Judge issued a bond memorandum on February 8, 2019, setting forth the reasons for the bond decision. The Immigration Judge ordered the respondent released upon payment of a \$5,000 bond. The appeal will be dismissed.

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); *Matter of S-H-*, 23 I&N Dec. 462, 464-65 (BIA 2002). 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).

The Immigration Judge determined that the respondent met his burden of establishing that he would not be a danger to others if released on bond, and he set bond at \$5,000 to ensure the respondent's presence at future court appearances. The DHS challenges that ruling on appeal, arguing that the respondent's 2018 arrest for operating while under the influence (OWI) establishes that he is a danger to the community and should not be granted bond.

An alien in a custody determination under section 236(a) of the Act must establish to the satisfaction of the Immigration Judge and this Board 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 Adeniji*, 22 I&N Dec. 1102 (BIA 1999). The burden is on the alien to show that he or she merits release on bond. *See* 8 C.F.R. § 1003.19; 8 C.F.R. § 236.1(c)(8); *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) (providing that an Immigration Judge has broad discretion in deciding the factors that he may consider in custody redeterminations and that the Immigration Judge may choose to give greater weight to one factor over others, as long as the decision is reasonable). An alien who presents a danger to person or property should not be released during the pendency of removal proceedings. *See Matter of Drysdale*, 20 I&N Dec. 815 (BIA 1994).

We find no clear error in the Immigration Judge's fact-findings, and we agree with the Immigration Judge's determination that the respondent met his burden of establishing that he warrants release on bond. The DHS notes on appeal that the respondent's blood alcohol level was .178 at the time of his arrest for OWI. The Immigration Judge cited this serious negative factor in

the bond memorandum, but concluded that the respondent nevertheless met his burden of proof for bond (IJ at 3-4). Although the DHS also states that the respondent failed to admit that he has a drinking problem, the Immigration Judge noted that the respondent testified that he does not have a problem with alcohol, and that he acknowledged that he should not have been driving after drinking, and he showed remorse for his actions (IJ at 3-4). At the end of the bond hearing, the Immigration Judge concluded that the OWI charge was an "isolated incident," and determined that the respondent would not be a danger to others in the future (IJ at 3). While we have stated that driving under the influence is a significant adverse factor in bond determinations, *see Matter of Siniauskas*, 27 I&N Dec. 207 (BIA 2018), we agree with the Immigration Judge that the respondent's sole offense should not preclude the grant of bond in this case. Thus, despite the arguments of the DHS on appeal, we find that the Immigration Judge's decision to grant bond was reasonable. *See Matter of Guerra*, 24 I&N Dec. at 40. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.



FOR THE BOARD