



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

**MATHEW T. LUENING
THE LUENING LAW PRACTICE LLC.
105 E WALKER STREET
MILWAUKEE, WI 53204**

**DHS/ICE Office of Chief Counsel - SDC
146 CCA Road, P.O.Box 248
Lumpkin, GA 31815**

Name: A [REDACTED], F [REDACTED] V [REDACTED] ... A [REDACTED]-523

Date of this notice: 10/12/2018

Enclosed is a courtesy 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
Mann, Ana
Adkins-Blanch, Charles K.

Userteam: Docket

**For more unpublished decisions, visit
www.irac.net/unpublished/index**

Falls Church, Virginia 22041

File: [REDACTED]-523 – Lumpkin, GA

Date:

OCT 12 2018

In re: F [REDACTED] V [REDACTED] A [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se¹

ON BEHALF OF DHS: Martinque Parker
Assistant Chief Counsel

APPLICATION: Custody redetermination

The respondent, a native and citizen of Mexico, has appealed the Immigration Judge's May 23, 2018, bond decision denying the respondent's request for a change in custody status. On June 19, 2018, the Immigration Judge issued a bond memorandum containing the reasons for his decision. The Department of Homeland Security (DHS) filed a brief in opposition to the appeal. The appeal will be sustained, and a bond will be set at \$10,000.

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).

In the present matter, the respondent's custody determination is governed by the provisions of section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a). An alien in a custody determination under this section must establish 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, 1114 (BIA 1999); *see also* 8 C.F.R. § 1236.1(c)(8); *Matter of D-J-*, 23 I&N Dec. 572, 576 (A.G. 2003).

The Immigration Judge determined that the respondent is not a danger to the community. However, the Immigration Judge found that the respondent poses a flight risk and ordered that his request for a change in custody status be denied (Bond Order). The Immigration Judge determined that the respondent did not present sufficient evidence that he is not a flight risk because his application for relief pursuant to section 240A(b)(1) of the Act is too speculative and unlikely to succeed (Bond Memorandum at 3-4).

¹ An attorney filed a Notice of Appeal on behalf of the respondent. However, the attorney did not file a Notice of Appearance before the Board (Form EOIR-27) and therefore we will not recognize the attorney. We will nevertheless provide the attorney with a courtesy copy of the decision.

On appeal, the respondent argues that the Immigration Judge's decision denying his request for a bond was arbitrary and unnecessary given the circumstances of his case. The respondent suggests that a bond of \$8,000 would be appropriate in his case (Bond Exh. 1; Notice of Appeal). The respondent has a fixed address and he argues that he is eligible for cancellation of removal under section 240A(b)(1) of the Act (Notice of Appeal). The respondent asserts that he has been present in the United States since 1996, that his two United States citizen children who were born in 2002 and 2003 will suffer hardship upon his removal, and he has submitted letters from members of the community, including his employer, attesting to his character (Bond Memorandum at 3; Bond Exhs. 1-2). In addition, he has no criminal convictions (Bond Exh. 1). We acknowledge the Immigration Judge's reasoning that the respondent has a heavy burden to establish that his removal would cause hardship to his qualifying relatives that is substantially beyond the hardship that would ordinarily be expected when a close family is removed. Section 240A(b)(1)(D) of the Act; *See Matter of Andazola*, 23 I&N Dec. 319, 323-24 (BIA 2002); *Matter of Monreal*, 23 I&N Dec. 56, 64-65 (BIA 2001); *compare Matter of Recinas*, 23 I&N Dec. 467, 470-72 (BIA 2002). Nonetheless, given the respondent has a fixed address, has resided in the United States for more than 20 years, and has strong family and community ties to the United States, we conclude that a \$10,000 bond is sufficient to mitigate any flight risk that he may pose.

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: The respondent's bond is set at \$10,000.



FOR THE BOARD