



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: R [REDACTED] C [REDACTED], L [REDACTED]

A [REDACTED]-742

Date of this notice: 4/9/2019

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:
Kelly, Edward F.

Userteam: Docket

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Falls Church, Virginia 22041

File: A [REDACTED]-742 – Omaha, NE

Date: APR - 9 2019

In re: I [REDACTED] R [REDACTED] C [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Daniel Vondra, Esquire

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

APPLICATION: Custody redetermination

This is an appeal by the Department of Homeland Security (DHS) from an Immigration Judge's September 12, 2018, bond order setting the respondent's bond at \$5,000. On October 3, 2018, the Immigration Judge issued a bond memorandum explaining the reasons for the decision. The 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, and all other issues de novo. See 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

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 Guerra*, 24 I&N Dec. 37 (BIA 2006); *Matter of Adeniji*, 22 I&N Dec. 1102 (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).

On appeal, the DHS argues that in light of the respondent's arrest for driving under the influence (DUI) while exceeding the speed limit by twenty miles per hour, without a driver's license, the Immigration Judge erred in finding that the respondent met her burden of establishing that she does not present a danger to the community.

We acknowledge the DHS's arguments, and although we find this to be a close case, we nonetheless affirm the Immigration Judge's determination for the reasons stated in the Immigration Judge's bond memorandum (IJ Bond Memo at 3-4). While we do not condone the respondent's behavior, we note that this one DUI represents her only criminal history in the United States, apart from minor traffic infractions. Compare *Matter of Siniauskas*, 27 I&N Dec. 207 (BIA 2018) (alien, arrested for drunk driving with a history of numerous DUI convictions, including ones that involved accidents, failed to establish that he did not present a danger to the community). Moreover, a court-ordered substance abuse evaluation found that the respondent did not require counseling for a drinking problem, and the respondent has expressed remorse for her actions (IJ Bond Memo at 3). We are satisfied that the respondent's family responsibilities, potential for

relief from removal, and the amount of bond set by the Immigration Judge provide adequate incentives for the respondent to reform her behavior such that she does not present a danger to the community.

The DHS has not contested the Immigration Judge's assessment that the respondent does not present a flight risk (IJ Bond Memo at 4).

Accordingly, the following order will be entered.

ORDER: The DHS's appeal is dismissed.



FOR THE BOARD