



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

**Castaneda, Jason
Law Office of Jason Castaneda
4014 Gulf St.
Houston, TX 77087**

**DHS/ICE Office of Chief Counsel - HOD
126 Northpoint Drive, Suite 2020
HOUSTON, TX 77060**

Name: H [REDACTED], H [REDACTED] M

A [REDACTED]-406

Date of this notice: 4/10/2018

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:
Snow, Thomas G

User team: Docket

**For more unpublished decisions, visit
www.irac.net/unpublished/index**

Falls Church, Virginia 22041

File: [REDACTED] 406 – Houston, TX

Date:

APR 10 2018

In re: H [REDACTED] M. H [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jason Castañeda, Esquire

APPLICATION: Change in custody status

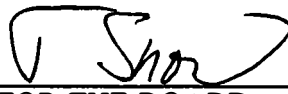
In a bond decision dated January 2, 2018, an Immigration Judge denied the respondent's request for a change in custody status and ordered that he remain held without bond. The bond order is accompanied by a February 5, 2018, explanatory memorandum. The respondent appealed from the January 2018 bond decision. The record will be remanded.

The Immigration Judge found that the respondent was ineligible for bond because he did not meet his burden to demonstrate that he did not pose a danger to the community. As noted by the Immigration Judge in the February 2018 memorandum, the respondent had a pending charge for driving while intoxicated (DWI), had a dismissed charge for public intoxication, and had been driving without a license for the past 4 years. The respondent was charged with removability under section 212(a)(6)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(6)(A)(i).

The respondent has furnished a document from the Texas criminal court showing that on February 26, 2018, subsequent to the January 2018 bond decision, the DWI charge was dismissed. We find that this development constitutes a material change in the respondent's circumstances since the Immigration Judge's issuance of the January 2018 bond decision.

Accordingly, we will remand the record in this bond case. On remand, the Immigration Judge should redetermine the respondent's custody status in light of the aforementioned recent development and should include a flight risk assessment.

ORDER: The record is remanded to the Immigration Court for further proceedings and for the issuance of a new bond decision, consistent with this opinion.



FOR THE BOARD

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
HOUSTON SERVICE PROCESSING CENTER
HOUSTON, TEXAS**

IN THE MATTER OF:

HE [REDACTED], H [REDACTED] M.

RESPONDENT

)
)
)
)
)
)

IN BOND PROCEEDINGS

A [REDACTED]

ON BEHALF OF RESPONDENT:

Jason Castaneda, Esq.
Law Office of Jason Castaneda
4014 Gulf Street
Houston, Texas 77087

**ON BEHALF OF THE DEPARTMENT
OF HOMELAND SECURITY:**

Brooke Fuselier, Esq.
126 Northpoint Drive
Houston, Texas 77060

MEMORANDUM AND ORDER ON MOTION FOR BOND REDETERMINATION

Respondent has requested reconsideration of the conditions of his custody status pursuant to the authority of this Court. The Department of Homeland Security (DHS) issued a Notice to Appear against Respondent on November 7, 2017, and a warrant of arrest determining that Respondent should not be released on bond. DHS charged Respondent with inadmissibility pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("the Act"), as amended.

At a bond hearing held on January 2, 2018, the Court declined to redetermine the conditions of Respondent's custody status after finding that he failed to demonstrate that he is not a danger to the community. Before any release on bond may be considered, an alien must demonstrate that his release would not pose a danger to the community. *Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009); 8 C.F.R. § 1236.1(c)(8).

At the bond hearing, it was established that Respondent is a native and citizen of Mexico. He claimed that he arrived in the United States in 1995 and has never departed the country. He further indicated that he traveled to the United States because of the poor economic situation in Mexico.

Respondent is married and has four children, ages 13, 19, 38, and 32. His wife and his three eldest children do not have lawful authorization to be in the United States. His youngest child is a United States citizen. Respondent's mother is a lawful permanent resident who lives in Galena Park, Texas. Respondent also has a brother who is a United States citizen. Respondent's brother submitted a relative petition, Form I-130, for him in 2001. Respondent also has brothers, sisters, cousins, nephews, and nieces in the United States.

Respondent owns six vehicles—three for personal use and three trucks that are used for concrete delivery. Respondent owns a business, Humberto Hernandez Delivery Company, and he has employees. He owns a house as well as an additional four properties. *See* Respondent's Motion for Bond Redetermination, Tab H (Dec. 4, 2017).

Respondent stated that he was arrested in 2011, but that he did not remember why he was arrested. The record reflects that he was arrested in Houston, Texas, on September 1, 2011, for public intoxication, a Class C misdemeanor. *See* Respondent's Motion for Bond Determination at 10. In Texas, a person commits the offense of public intoxication if the person appears in a public place while intoxicated to the degree that the person may endanger the person or another. Tex. Penal Code Ann. § 49.02. This charge was subsequently dismissed on February 13, 2012, after he completed a deferred disposition. *Id.*

Respondent was arrested a second time on November 5, 2017, for driving while intoxicated. *See* Respondent's Motion for Bond Determination at 12-16. The police report indicates that Respondent was "driving in the middle of two lanes going down the bridge." The officer then observed that "[t]he vehicle then moved to the right lane and weaved back into the left lane multiple times." *Id.* at 15. Moreover, once the officer began to interact with Respondent, he noted that Respondent had "red bloodshot eyes, a slurred speech and a strong odor of an alcoholic beverage emitting from his breath and/or person." *Id.* Respondent told the officer that he had consumed eight "Budlight beers" at a party. The officer completed three "Standardized Field Sobriety Tests (SFSTs)" with Respondent. *Id.* at 15-16. During the second SFST, the "Walk and Turn," Respondent was unable to maintain the start position and missed heel to toe multiple times. *Id.* at 16. He also stepped off the line and used his arms for balance. The officer noted that Respondent "took the incorrect steps by taking 8 steps forward. He also stopped while walking and made an improper turn by stepping with both feet." *Id.* Similarly, during the third exercise, the "One Leg Stand," Respondent "swayed, used his arms for balance and put his foot down several times." *Id.*

Due to the officer's observations and Respondent's "poor performance on SFSTs," the officer determined that Respondent "had lost the normal use of his physical and mental faculties and was unsafe to operate a motor vehicle on a public roadway." *Id.* The officer also noted that he located one open Tecate Light beer and one unopened Tecate Light beer in the front seat of Respondent's truck and that both cans of beer were cold. *Id.* Respondent was placed into custody and taken to Bayshore Hospital for a blood draw. *Id.* Notably, Respondent testified that he did not do a breath test or a blood test and that he did not remember being taken to Bayshore Hospital.

Respondent further disclosed that his commercial driver's license expired in 2013 and that he does not currently possess a valid driver's license. He also disclosed that he has diabetes and that doctors have advised him not to drink beer.

Respondent has not demonstrated that he does not pose a danger to the community in light of his decision to drive under the influence of alcohol. He has two arrests related to intoxication which taken together, demonstrate that his behavior is escalating—he is now driving

while under the influence of alcohol. While he has not been convicted of DWI, the Court nevertheless finds that Respondent's act of consuming several alcoholic drinks prior to driving endangered everyone in the community, as evidenced by the observations of the police officers who arrested him. Even the United States Supreme Court has acknowledged the well-known dangers and costs of drunk driving, including a multitude of deaths, injuries and property damage. *See Michigan v. Sitz*, 496 U.S. 444, 451 (1990). Respondent's act of driving after having consumed a significant amount of alcohol—that is, eight beers—is sufficient to show that he engaged in conduct that posed a danger to others.

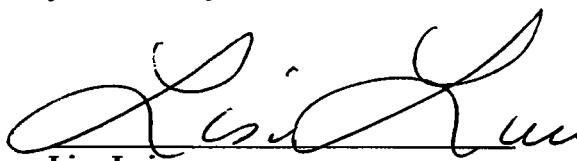
Not only did Respondent admittedly drive while under the influence of alcohol, he has driven without a license for the past four years. Possession of a driver's license would at least provide some assurance that the State of Texas recognizes Respondent as qualified to drive a motor vehicle. In Texas, where Respondent drove without a license, an applicant for a driver's license must generally undergo a test of his: (1) vision; (2) ability to identify and understand highway signs in English that regulate, warn, or direct traffic; (3) knowledge of the traffic laws of the state; (4) knowledge of motorists' rights and responsibilities in relation to bicyclists; (5) ability to exercise ordinary and reasonable control in the operation of a motor vehicle of the type that the applicant will be licensed to operate; and (6) any additional examination the state finds necessary to determine the applicant's fitness to operate a motor vehicle safely. Texas Transportation Code Ann. §§ 521.161(a), (b). Respondent did not demonstrate that he is qualified to drive pursuant to any of these state requirements.

Under the circumstances, the Court has no confidence that Respondent will not continue to engage in dangerous actions if he is released on bond. Consequently, the Court will not consider any release on bond. *See Urena*, 25 I&N Dec. at 141; 8 C.F.R. § 1236.1(c)(8).

Accordingly, the following is the order of the Court:

IT IS HEREBY ORDERED that Respondent's request for a custody redetermination is **DENIED**.

Signed at Houston, Texas, this 5th day of February, 2018.



Lisa Luis
Immigration Judge