



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: H [REDACTED] R [REDACTED], J [REDACTED] ... A [REDACTED]-324**

**Date of this notice: 12/10/2018**

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  
Kelly, Edward F.  
Geller, Joan B

Sn: [REDACTED]  
Userteam: Docket

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Falls Church, Virginia 22041

File: A-324 – Houston, TX

Date: DEC 10 2018

In re: J- R- H- R-

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Luis R. Cotto, Esquire

APPLICATION: Custody redetermination

The respondent, a native and citizen of El Salvador, appeals the bond decision of the Immigration Judge, dated July 19, 2018, denying his request for a redetermination of his custody status. On August 28, 2018, the Immigration Judge issued a bond memorandum explaining the reasons for the decision. The appeal will be sustained and the record remanded.

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. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

An alien in a custody determination under section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a), must establish to the satisfaction of the Immigration Judge and this Board that he does not present a danger to persons or property, is not a threat to national security, and does not pose a risk of flight. *See Matter of Adeniji*, 22 I&N Dec. 1102 (BIA 1999). An alien who presents a danger to persons or property should not be released during the pendency of proceedings to remove him from the United States. *See Matter of Urena*, 25 I&N Dec. 140 (BIA 2009); *Matter of Drysdale*, 20 I&N Dec. 815 (BIA 1994).

As found by the Immigration Judge, the respondent was arrested for driving while intoxicated (DWI). The respondent denied driving while intoxicated but presented no criminal records or other documentation to establish the circumstances of his arrest, including the specific offense or offenses with which he has been charged.

On appeal, the respondent argues that the Immigration Judge wrongly denied his request for bond (Respondent’s Notice of Appeal). He asserts that he has no prior criminal history and has pending claims for relief from removal, including for cancellation of removal, and a pending application for a U visa as a crime victim.

The determination of whether an individual represents a danger to the community and should be denied bond is not subject to review for clear error, but is ultimately a question of judgment which we review de novo. *See* 8 C.F.R. § 1003.1(d)(3)(i)-(ii); *Matter of Guerra*, 24 I&N Dec. 37, 39 (BIA 2006) (whether an alien should be released on bond is a discretionary determination).

We will sustain the appeal from the Immigration Judge's decision. We recognize that drunk driving is an extremely dangerous crime and acknowledge the Immigration Judge's reasoning. However, on the record before us, we conclude that the respondent has met his burden to show that he does not represent a danger to the community. While the respondent has an arrest for DWI, there has been no adjudication of the offense and the respondent denies guilt. Moreover, there is no evidence that the alleged incident involved injury to a person or damage to property, nor any suggestion that the respondent has a prior history of DWI or any other criminal conduct. *Cf. Matter of Siniauskas*, 27 I&N Dec. 207 (BIA 2018) (alien, who had a history of drinking and driving, had numerous DUI convictions, including ones that involved accidents).

In light of our determination regarding danger, we will remand the record to the Immigration Judge to determine if the respondent presents a flight risk and, if appropriate, to set a reasonable amount of bond. The parties may submit additional evidence on remand. Accordingly, the following order will be entered.

ORDER: The respondent's appeal is sustained, and the record is remanded to the Immigration Judge for further proceedings consistent with the foregoing decision.



FOR THE BOARD

Temporary Board Member Joan Geller respectfully dissents without opinion.