



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: M [REDACTED]-L [REDACTED], F [REDACTED] N [REDACTED] ... A [REDACTED]-785**

**Date of this notice: 5/6/2019**

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:  
Mann, Ana

5/13/19  
User team: Docket

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Falls Church, Virginia 22041

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File: [REDACTED]-785 -- San Diego, CA

Date: **MAY - 6 2019**

In re: P [REDACTED] N [REDACTED] M [REDACTED] -L [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: William J. Baker, Esquire

ON BEHALF OF DHS: Guy G. Grande  
Assistant Chief Counsel

APPLICATION: Change in custody status

The Department of Homeland Security (DHS) has appealed from the Immigration Judge's March 20, 2018, decision releasing the respondent, a native and citizen of Mexico, from custody on her own recognizance. The Immigration Judge issued a Bond Memorandum on April 25, 2018, setting forth the reasons for the bond 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. 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 a custody determination under section 236(a) of the Immigration and Nationality Act, an alien must establish to the satisfaction of the Immigration Judge and this Board that 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 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). An Immigration Judge may properly consider any adverse information in assessing whether an alien's release on bond is warranted. *See Matter of Guerra*, 24 I&N Dec. at 40. In deciding whether to set a bond, an Immigration Judge should consider the nature and circumstances of the alien's criminal activity, including any arrests and convictions, to determine if the alien is a danger to the community, but family and community ties generally do not mitigate an alien's dangerousness. *Matter of Siniauskas*, 27 I&N Dec. 207 (BIA 2018).

DHS points to a Record of Deportable/Inadmissible Alien (Form I-213, Exh. 3) that provides grounds for suspicions of criminal activity on the respondent's part. According to the Form I-213, which was prepared by a Border Patrol agent, a suspect ("Suspect 1") who was arrested by Border Patrol agents on January 24, 2018, for transporting aliens illegally in the United States had named the respondent as the person who had recruited her as a driver. She claimed that she had little involvement in the smuggling operation and that she had only agreed 1 week prior to her arrest to


Cite as: P-N-M-L-, AXXX XXX 785 (BIA May 6, 2019)

take part. Although this evidence raises clear concerns, the Form I-213 also states that another suspect ("Suspect 2") who was arrested by the Border Patrol in connection with the January 24, 2018, operation informed the officers that he was the organizer for the operation, that he had recruited Suspect 1 to be the lead driver, that he had put her in contact with smugglers in Mexico, and that she had driven for him 8 times. This evidence undermines Suspect 1's credibility and her claim to minimal involvement. Suspect 2 did not name the respondent as having any involvement. Moreover, the Immigration Judge correctly noted that all charges had been dismissed against the three persons who had been arrested on January 24, 2018 (Exh. 5). No criminal charges were ever filed against the respondent, and the Immigration Judge credited the respondent's claims of non-involvement in alien smuggling. This determination is not clearly erroneous. See 8 C.F.R. § 1003.1(d)(3)(i). The respondent has no arrests for violent behavior. Finally, although family and community ties *generally* do not mitigate an alien's dangerousness, see *Matter of Siniauskas*, 27 I&N Dec. at 207, it was not unreasonable in this case for the Immigration Judge to consider the supporting statements submitted by community members on behalf of the respondent.

Given these facts, we affirm the Immigration Judge's conclusion that the respondent has met her burden of establishing that she would not be a danger to the community if released from custody on her own recognizance.

Accordingly, the following order will be entered.

ORDER: The Department of Homeland Security's appeal is dismissed.

  
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FOR THE BOARD