



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: S [REDACTED], S [REDACTED]

A [REDACTED] 008

Date of this notice: 9/15/2017

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Cynthia L. Crosby
Deputy Chief Clerk

Enclosure

Panel Members:
Greer, Anne J.
Mullane, Hugh G.
Kelly, Edward F.

Userteam: Docket

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Falls Church, Virginia 22041

File: [REDACTED] 008 – Atlanta, GA

Date: SEP 15 2017

In re: S [REDACTED] S [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Ifeanyi Victor Okeke, Esquire

ON BEHALF OF DHS: Ginger Vaudrey
Assistant Chief Counsel

APPLICATION: Custody redetermination

The respondent appeals from an Immigration Judge's March 28, 2017, order denying his bond redetermination request. The reasons for the Immigration Judge's bond order are set forth in an April 14, 2017, bond memorandum. The Department of Homeland Security ("DHS") opposes the appeal. The respondent's appeal will be sustained, and the respondent's original bond of \$22,500 will be reinstated.


We review findings of fact by the Immigration Judge for clear error, while all other issues, including whether the parties have met the relevant burden of proof, are reviewed de novo. 8 C.F.R. §§ 1003.1(d)(3)(i)-(ii).

On August 5, 2015, an Immigration Judge in Florence, AZ ordered the respondent released from custody upon payment of a \$22,500 bond. In the bond order, the Immigration Judge noted that the respondent "shall reside at 1379 Valley View Rd. Atlanta, GA 30338-4822." The respondent paid the bond and had his removal proceedings transferred to the Atlanta Immigration Court. On January 17, 2017, the respondent, through prior counsel, filed an Alien's Change of Address Form/Immigration Court (Form EOIR-33) and a Motion to Change Venue & Written Pleadings requesting that the venue be changed from the Atlanta Immigration Court to the New York Immigration Court because his address had changed to "135-06 Foch Boulevard S. Ozone Park, NY 11420." Thereafter, the DHS revoked the respondent's bond and detained him. The Immigration Judge denied the respondent's request for a change in custody status because he found that the respondent had violated the conditions of his bond by moving from Georgia to New York.

We disagree with the Immigration Judge that the respondent violated the conditions of his bond. As required in the prior bond order, the respondent resided at a specified address in Atlanta, GA. The bond order did not indicate that the respondent must reside at that address indefinitely, and the respondent was advised that he must inform the court if he changed addresses. The respondent submitted a change of address form when he moved from Georgia to New York, and he has otherwise maintained contact with the Immigration Court concerning his case and whereabouts. Thus, we conclude that the respondent did not violate the conditions of bond and he is not otherwise a flight risk to the extent that he should be held without bond pending his removal proceedings.

Accordingly, the following order will be entered.

ORDER: The appeal is sustained, and the respondent's bond is reinstated to \$22,500.



FOR THE BOARD

Board Member Hugh G. Mullane dissents without opinion.

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Atlanta, Georgia**

IN THE MATTER OF:

S [REDACTED], S [REDACTED]

Respondent

IN BOND PROCEEDINGS

File No. A# [REDACTED] 008

CHARGE: Section 212(a)(6)(A)(i) of the Act, in that Respondent is an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

APPLICATION: Respondent's Motion for Bond Redetermination

APPEARANCES

ON BEHALF OF RESPONDENT:

Ifeanyi V. Okeke, Esq.
Victor Ifeanyi Okeke, LLC
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ON BEHALF OF THE DEPARTMENT:

Assistant Chief Counsel
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MEMORANDUM AND DECISION OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

Sukhwinder Singh ("Respondent") is an adult male native and citizen of India. Respondent entered the United States at or near San Luis, Arizona, on or about June 13, 2015, and was not then admitted or paroled after inspection by an immigration officer. See NTA.

On June 14, 2015, the Department of Homeland Security ("Department") issued Respondent a Form I-862, Notice to Appear ("NTA"), charging him as removable under section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended ("INA" or "the Act"). See NTA.

On July 2, 2015, Respondent filed a Motion for Bond with the Florence Immigration Court.

On August 5, 2015, the Court granted Respondent's request for bond in the amount of \$22,500. See Dept's Opposition to Resp't's Mot. for Bond Redetermination, Exh. 1. Respondent's release from custody was further conditioned upon his receipt of medical clearance and his residing at "1379 Valley View Rd., Atlanta, GA 30338." Id.

On August 26, 2015, the Florence Immigration Court granted Respondent's Motion to Change Venue because Respondent had been released from custody and was living in Atlanta, Georgia. See I-830.

On January 18, 2017, Respondent filed a Motion to Change Venue & Written Pleadings, requesting that venue be changed to New York, New York, because Respondent's address had changed to "135-06 Foch Boulevard, S. Ozone Park, NY 11420."

On February 16, 2017, the Department filed a Form I-830 with the Court, indicating that Respondent was detained in Atlanta, Georgia.

On February 27, 2017, Respondent filed a Motion for Bond Redetermination with the Court.

On March 14, 2017, Respondent had a custody hearing before the Court. At the close of the hearing, the Court reserved its decision on Respondent's Motion for Bond Redetermination.

On March 14 and 21, 2017, Respondent filed additional documentation in support of his Motion for Bond Redetermination.

On March 28, 2017, the Department filed an Opposition to Respondent's Motion for Bond Redetermination.

On March 28, 2017, Respondent had another custody hearing before the Court. At the close of the hearing, the Court denied Respondent's Motion for Bond Redetermination.

On April 3, 2017, Respondent appealed the Court's decision to the Board of Immigration Appeals ("Board"). Therefore, the Court will issue the following decision explaining its denial of Respondent's Motion for Bond Redetermination.

II. STATEMENT OF LAW

Section 236(a) of the Act provides that the Attorney General may, in his discretion, release a detained alien pending a final decision on removability. INA § 236(c)(1)(B); Matter of Joseph, 22 I&N Dec. 799, 802 (BIA 1999). To qualify for release, the alien must establish that he is not a threat to the community or a flight risk. Matter of Drysdale, 20 I&N Dec. 815, 816-17 (BIA 1994); Matter of Patel 15 I&N Dec. 666, 666-67 (BIA 1976). In making a determination regarding these issues, the Court should consider the following nonexclusive factors: local family ties; length of residence in the community; prior arrests; convictions; record of appearances at hearings; employment history; membership in community organizations; manner of entry and length of time in the United States; immoral acts or participation in subversive activities; property or business ties; fixed address; availability and likelihood of relief; and financial ability to post bond. Matter of Andrade, 19 I&N Dec. 488, 489 (BIA 1987); see also Matter of Khalifah, 21 I&N Dec. 107, 110-12 (BIA 1995); Matter of Ellis, 20 I&N Dec. 641, 642-43 (BIA 1993); Matter of P-C-M-, 20 I&N Dec. 432, 434-35 (BIA 1991); Matter of Shaw, 17 I&N Dec. 177, 178-79 (BIA 1979); Matter of San Martin, 15 I&N Dec. 167, 168-69 (BIA 1974). In addition, an alien's character is a relevant factor in determining the necessity for or the amount of bond. Matter of Andrade, 19 I&N Dec. at 489.

Aliens do not have the “right” to release on bond under INA § 236(a). Matter of D-J, 23 I&N Dec. 572, 575 (A.G. 2003) (citing Carlson v. Landon, 342 U.S. 524, 534 (1952)). If the Court determines that an alien is a flight risk, it has the authority to decline setting a bond amount. See id. at 584 (finding that the authority to remove aliens is meaningless without the authority to detain those aliens who pose a danger or are a flight risk during the process of determining whether they should be removed). The Board has also consistently recognized that the Attorney General has broad discretion in determining whether to release an alien on bond. Id. at 576; Matter of Guerra, 24 I&N Dec. 37, 39 (BIA 2006). The alien maintains the burden of persuading the Court that he is neither a flight risk nor a threat to the community. Ellis, 20 I&N Dec. at 642.

III. DISCUSSION

In his Motion, Respondent argues that his bond should be reinstated because: (1) he was unaware that his bond was conditioned upon his residence remaining in Georgia; and (2) “he did not abandon his residence in Atlanta, GA.” Mot. for Bond Redetermination, at 2. Because the Court finds both of the above claims unpersuasive and further finds that Respondent is a flight risk, it denies Respondent’s request for bond redetermination.

First, Respondent claims he was unaware that his bond was conditioned upon his residence remaining in Georgia. In an affidavit attached to his Motion for Bond Reconsideration, Respondent states that he was not present at the August 5, 2015 hearing, during which bond was granted, because he had contracted the chickenpox and was on lockdown. See id. Exh. AA, para. 4. He states that his understanding of English is limited and that he “was never informed that [his] bond was conditioned upon the fact that [he] must reside at 1379 Valley View Road, Atlanta, GA 30338.” Id. paras. 5–6. He further states that when he asked his prior attorney, Suraj Singh (“Attorney Singh”), about transferring his case to New York, Attorney Singh did not inform him that such a move would violate the terms of his bond. Id. para. 7. He also states that neither his prior attorney nor his current attorney have a copy of the bond order. Id. para. 7.

The Court finds this argument unpersuasive. Respondent’s claim is premised on the assertion that the attorney who represented him at his bond hearing on August 5, 2015, did not later provide him with a copy of the Court’s order, nor did he inform Respondent of the conditions of his bond. However, Respondent has not supported this assertion with anything other than his personal affidavit. The record evinces that Respondent was represented by Ramsey Carpenter (“Attorney Carpenter”) at his August 5, 2015 bond hearing. Although Respondent has provided an affidavit from Attorney Carpenter, he concedes in the affidavit that he “do[es] not recall what was said in court that day.” Resp’t’s Additional Documentation, Exh. E. The affidavit also does not detail Attorney Carpenter’s interactions, or lack thereof, with Respondent after his August 5, 2015 bond hearing. See id. Although Respondent has attached an affidavit from Attorney Singh, it also lacks any detail regarding his knowledge or lack thereof of Respondent’s bond conditions. Id. Exh. F. As a result, the Court finds Respondent’s claim that his attorneys failed to inform him that his bond was conditioned on maintaining a residence in Georgia to be unpersuasive.

Second, Respondent claims that he “never abandoned [his] Atlanta residence despite the recent New York move.” Mot. for Bond Redetermination, Exh. AA, para. 10. However, all of the

relevant evidence in the record indicates otherwise. On Respondent's asylum application, which was filed with the Court on March 28, 2017, and is also signed by Respondent, he indicates that he resided in Georgia until December of 2016, and in New York from January to February of 2017, at which point he was detained. See Asylum Application, at 4. In addition, Respondent filed a Motion for Change of Venue and a Form EOIR-33, Alien's Change of Address Form/Immigration Court ("EOIR-33"), with the Court on January 18, 2017—both of which indicate that Respondent changed his residence to New York. See Resp't's Mot. to Change Venue & Written Pleadings. Moreover, it belies credulity that Respondent would file a Motion to Change Venue to New York if he still maintained a residence in Georgia; presumably, if he maintained both residences, it would be just as inconvenient to travel to either state to attend a hearing. Accordingly, the Court also finds Respondent's claim that he has not abandoned his Atlanta residence to be unpersuasive.

Respondent has alleged no additional compelling reason for violating the conditions on his bond. In his affidavit, he states that his sponsor in Georgia is "able and willing" to allow Respondent to reside with him. Mot. for Bond Redetermination, Exh. AA, para. 12. He has also provided an affidavit from his sponsor confirming his willingness to house Respondent. Id. Exh. D, para. 16. Thus, it does not appear that Respondent's relocation to New York was the result of necessity or an exceptional situation. To the contrary, Respondent states that he moved "because there are many people from [his] native place there and it would be easier for [him] to get help regarding [his] case." Id. The Court finds such a justification insufficient to excuse his failure to comply with the Court's bond conditions.

Respondent now asks that bond be reinstated and states that he "can abide by any conditions which the court puts on [his] bond." Id. Exh. AA, para. 12. However, his blatant violation of the conditions on his initial bond indicates just the opposite. Moreover, his unauthorized move to New York further bolsters the fact that Respondent is a possible flight risk. See Matter of D-J-, 23 I&N Dec. at 577.

Accordingly, the Court will enter the following orders:

ORDERS OF THE IMMIGRATION JUDGE

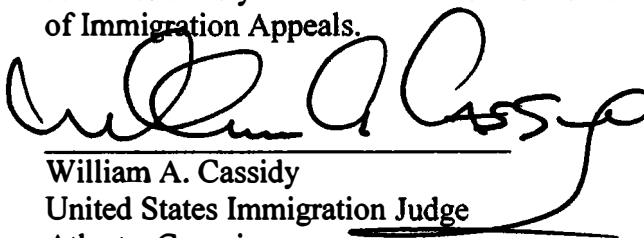
It is ordered that:

Respondent's Motion for Bond Redetermination is **DENIED**.

It is further ordered that:

Respondent's case is **CERTIFIED** under 8 C.F.R. § 1003.1(c) and the record shall be administratively **RETURNED** to the Board of Immigration Appeals.

4/14/17
Date


William A. Cassidy
United States Immigration Judge
Atlanta, Georgia