



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

**BAKER, WILLIAM JASON
Moreno & Associates
2082 Otay Lakes Road
Suite 102
Chula Vista, CA 91915**

**DHS/ICE Office of Chief Counsel - OTM
880 Front St, Room 2246
San Diego, CA 92101**

Name: E [REDACTED] T [REDACTED], A [REDACTED]

A [REDACTED]-315

Date of this notice: 7/27/2018

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:
Adkins-Blanch, Charles K.
Kelly, Edward F.
Mann, Ana

Userteam: Docket

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U.S. Department of Justice
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Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: [REDACTED] 315 – San Diego, CA

Date:

JUL 27 2018

In re: A [REDACTED] T [REDACTED] E [REDACTED] a.k.a. [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: William Baker, Esquire

APPLICATION: Change in custody status

The respondent, a native and citizen of Guatemala, has appealed the Immigration Judge's April 12, 2018, bond order. The Immigration Judge issued a bond memorandum setting forth the reasons for her bond determination on May 29, 2018. The respondent's appeal will be sustained, and the record will be remanded.

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 the present matter, 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 respondent argues that the Immigration Judge erred in finding that the respondent did not meet his burden of establishing that he does not present a danger to the community. We acknowledge the Immigration Judge's reasoning. However, on the record before us, we conclude that the respondent has met his burden. While we do not condone the respondent's DUI conviction, we note that it is his only DUI conviction, and, in fact, his only criminal conviction (Exh. 3). *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). We also note that the respondent did not receive any term of incarceration for his conviction, instead being sentenced to probation (Exh. 3). Moreover, no evidence in the record indicates that the conviction involved injury to a person or damage to property.

In light of our determination regarding danger, we will remand the record to the Immigration Judge 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.

A handwritten signature in black ink, consisting of stylized, overlapping loops and flourishes, positioned above a horizontal line.

FOR THE BOARD