



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: W [REDACTED], J [REDACTED]

A [REDACTED] 281

Date of this notice: 10/13/2017

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:
Grant, Edward R.
Malphrus, Garry D.
Adkins-Blanch, Charles K.

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Falls Church, Virginia 22041

File: [REDACTED] 281 – Dallas, TX

Date: **OCT 13 2017**

In re: J [REDACTED] W [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Myong O. Chung, Esquire

APPLICATION: Change in custody status

The respondent, a native and citizen of the People's Republic of China, has appealed the Immigration Judge's June 19, 2017, bond order. The Immigration Judge issued a bond memorandum setting forth the reasons for his bond determination on July 25, 2017. 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 her burden of establishing that she 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 her burden. The respondent has only one conviction, a 2016 disorderly conduct conviction based on an original prostitution charge. The respondent also has a pending prostitution charge. While we do not condone the respondent's criminal behavior, we conclude that the evidence is insufficient to demonstrate that the respondent presents a danger to the community. 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.



FOR THE BOARD

Board Member Garry D. Malphrus respectfully dissents without separate opinion.

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
DALLAS, TEXAS**

IN THE MATTER OF:

W [REDACTED], J [REDACTED]

RESPONDENT

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IN BOND PROCEEDINGS

A [REDACTED] 281

Applications: Further Redetermination of Custody Status

On Behalf of the Respondent

Myong O. Chung
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Norman, OK 73069

On Behalf of Department of Homeland Security

Christian Stringer, Esq.
DHS/ICE
125 E. John Carpenter Freeway, Suite 500
Irving, Texas 75062

BOND MEMORANDUM

Respondent is a fifty-two year old female native and citizen of China. Ex. 1. Respondent arrived in the United States on or about April 2016 as a nonimmigrant with authorization to remain in the U.S. for a temporary period not to exceed October 5, 2016. *Id.* On April 3, 2017, the Department of Homeland Security charged the Respondent with being subject to removal from the United States pursuant to Section 237(a)(1)(B) of the Immigration and Nationality Act (the Act). *Id.* Respondent admitted the allegations and conceded to the charge of removal against her.

On May 16, 2017, Respondent, by and through counsel, submitted a motion for custody determination. *See* Motion to Set for Bond Hearing (hereinafter "Respondent's Motion"), received May 17, 2017.

On June 19, 2017, and July 24, 2017, the presiding Immigration Judge, James A. Nugent, held a bond hearing. Judge Nugent found that the Respondent was a danger to the community, and the judge ordered that the Respondent's request for a change in custody status be denied. Respondent subsequently filed an appeal before the Board of Immigration Appeals ("BIA").

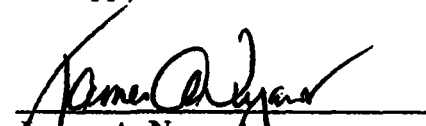
II. Legal Standard

Although an alien does not possess a constitutional right to release on bond, an alien who has been detained by DHS under the provisions set forth in 8 C.F.R. § 1236 has the right to seek

Therefore, having reviewed her record, the Court finds that Respondent has not met her burden of establishing eligibility for bond by proving that her “[r]elease would not pose a danger to property or persons.” 8 C.F.R. § 1236.1(c)(8). *Guerra*, 24 I&N Dec. at 41. As such, Respondent’s continued detention is mandated pursuant to the law. *Id.* Accordingly, it is ordered that Respondent’s request for a change of custody be denied.

ORDER

IT IS HEREBY ORDERED that Respondent’s Application for Bond Redetermination is **DENIED**.


James A. Nugent
Immigration Judge
USDOJ/EOIR

Copy to:
Deputy Chief Counsel, DHS/ICE