



U.S. Department of Justice

Executive Office for Immigration Review

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Name: M [REDACTED] L [REDACTED], L [REDACTED] D [REDACTED]

A [REDACTED]-093

Date of this notice: 11/12/2019

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:
Liebmann, Beth S.
Kelly, Edward F.
Couch, Stuart V.

• • •
User team: Docket

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Falls Church, Virginia 22041

File: A [REDACTED]-093 – Dallas, TX

Date: **NOV 12 2019**

In re: L [REDACTED] D [REDACTED] M [REDACTED] L [REDACTED]

IN BOND PROCEEDINGS

APPEA;

ON BEHALF OF RESPONDENT: Ryanne G. Konan, Esquire

APPLICATION: Change in custody status

The respondent, a native and citizen of St. Lucia, has appealed from the Immigration Judge's April 25, 2019, decision denying his request for a change in custody status. The Immigration Judge issued a bond memorandum and order on May 14, 2019, setting forth the reasons for the bond decision. The 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 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 he 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 he 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).

The respondent was convicted of driving under the influence on October 30, 2018 (IJ at 1; Exh. B1; Respondent's Br. at 4-5). The Immigration Judge noted that the respondent was also driving without a license, with an open container, and with his fiancée as a passenger (IJ at 1; Exh. B1). The Immigration Judge found the respondent did not meet his burden to show that he is not a danger to the community given the seriousness of the offenses and the endangerment of the life of his fiancée (IJ at 2).

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. The respondent contends that he had only a single DUI, that there was no accident or

property damage involved, and that his blood alcohol content was only .09 (Respondent's Br. at 4-5). We acknowledge the Immigration Judge's reasoning and that a single recent DUI under the circumstances noted is disturbing. However, upon review, and in the absence of any evidence of repeated offenses, we conclude that the respondent has met his burden to show he is not a present danger. The respondent's single driving under the influence conviction, while enough to give pause, does not rise to the level of dangerousness that precludes consideration of bond. *Cf. Matter of Siniauskas*, 27 I&N Dec. at 208, 210 (noting the dangerousness to the community of an alien with 4 DUI convictions, 3 accidents, and significant time served); *Matter of Castillo-Perez*, 27 I&N Dec. 664 (A.G. 2019).

Given the foregoing, we conclude that the respondent has met his burden of showing that he would not be a danger to persons or property in the United States if released from custody. We therefore will sustain the appeal and will remand the record to allow the Immigration Judge to determine whether the respondent has met his burden of showing that he would not be a flight risk if released or that a bond may be imposed in an amount to reasonably ensure his appearance in court.

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.



 FOR THE BOARD