

Falls Church, Virginia 22041

File: [REDACTED] - New York, NY

Date: DEC 17 2018

In re: [REDACTED]

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Tina Y. Song, Esquire

ON BEHALF OF DHS: Caroline Clark
Assistant Chief Counsel

APPLICATION: Redetermination of custody status

The respondent appeals the Immigration Judge's decision dated July 23, 2018. The Immigration Judge issued a bond memorandum dated August 29, 2018, setting forth the reasons for the bond decision. The Immigration Judge determined that the respondent poses a danger to the community and ordered that the respondent be held in custody without bond pursuant to section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a). 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).

An alien in a custody determination under section 236(a) of the Act must establish to the satisfaction of the Immigration Judge and this Board 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 Adeniji*, 22 I&N Dec. 1102 (BIA 1999). An alien who presents a danger to persons or property should not be released during the pendency of proceedings to remove him or her from the United States. *See Matter of Urena*, 25 I&N Dec. 140 (BIA 2009) (holding that only if an alien has established that he would not pose a danger to property or persons should an Immigration Judge decide the amount of bond necessary to ensure the alien's presence at proceedings to remove him from the United States); *Matter of Drysdale*, 20 I&N Dec. 815 (BIA 1994).

We do not agree with the Immigration Judge's determination that the evidence is sufficient to demonstrate that the respondent poses a danger to the community. The Immigration Judge found danger based on information in the Form I-213 that the Homeland Security Investigations (HSI) identified the respondent as an MS-13 gang associate. The HSI considered information about the people the respondent was associating with, information from the respondent's social media accounts on Facebook, and information from an "untested cooperating source" who identified the respondent as an MS-13 associate.

[REDACTED]

The Board does not concur with the Immigration Judge that Facebook photographs of the respondent, posted approximately two years prior to the bond hearing, wearing clothing commonly worn by people who are not gang members and the word of an untested cooperating source, is sufficient evidence that the respondent is a gang member and a danger to the community. The Immigration Judge acknowledged the evidence that the respondent had never been arrested for committing a crime, and had only been fined for some traffic violations. In addition, the Immigration Judge considered that the respondent had submitted several letters of support. We find that the respondent met his burden to demonstrate that he is not a danger to the community. Accordingly, we reverse the Immigration Judge's determination that the respondent poses a danger to the community.

The Immigration Judge did not make a determination as to whether the respondent poses a flight risk. Accordingly, the record will be remanded for the Immigration Judge to evaluate the evidence and make findings of fact and a determination regarding whether the respondent has met his burden to establish that he does not pose a flight risk. If it is determined that he poses a flight risk, the Immigration Judge must assess the appropriate bond amount.

ORDER: The appeal is sustained.

FURTHER ORDER: The Immigration Judge's July 23, 2018, bond order is vacated and the record is remanded for a determination regarding whether the respondent poses a flight risk and any appropriate bond amount.



FOR THE BOARD

