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NON-DETAINED

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
FALLS CHURCH, VIRGINIA

In The Matter Of:	)	
	)	**File No.: A###-###-###**
[First Name LAST NAME]	)	
	)	
In Bond Proceedings	)	
	)	

RESPONDENT'S BRIEF IN SUPPORT OF BOND APPEAL

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RESPONDENT'S BRIEF IN SUPPORT OF BOND APPEAL

Respondent, by and through undersigned counsel, Himedes V. Chicas, and the Law Offices of Jezic, & Moyse, LLC, hereby submits this brief in support of his support of his Form EOIR-26, Notice of Appeal from a Decision of the Immigration Judge ("IJ") in bond proceedings. For the reasons stated below, Respondent respectfully submits that the IJ erred in failing to consider relevant factors and evidence demonstrating the Respondent's low fight risk and the Court further erred in having admitted and considered an unreliable Form I-213 that was more prejudicial than probative, all of which resulted in the Court setting an unreasonably high bond amount of $##,###.

STATEMENT OF FACTS

Respondent is a [age] (##) year old native and citizen of [Country]. *See* Notice to Appear ("NTA"), Exh. 1. He entered the United States on or around April 20## through the Mexican-U.S. border.[1] On March ##, 20##, Respondent was detained by the Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE") and issued a NTA charging him with being an alien present without admission or parole under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA"). *See* Exh. 1. On March ##, 20##, the DHS determined that Respondent should not be released on bond. *See* Notice of Custody Determination, Exh. 2, Tab A, at p. 3.

On April ##, 20##, the Respondent filed a Motion for Custody and Bond Redetermination with the Baltimore Immigration Court, in which he asked the Immigration Judge ("IJ") to grant him a bond of $1,500.00 as he does not present a danger to the community or a flight risk. *See*

[1] The NTA indicates that Respondent's date of entry is unknown, but Respondent maintains that he entered the United States on or around April 20##. *See* Resp't's Mot. for Custody and Bond Redetermination, Exh. 2, at ¶ 5, (filed April ##, 20##).

Resp't's Mot. for Bond Redetermination, Exh. 2, Tabs A-J (filed April ##, 20##). In his motion, Respondent stated that he has a fixed address in Maryland, has maintained residence primarily in Maryland since his arrival to the United States, and has lived in the United States for approximately fourteen (14) years. *See* Exh. 2, ¶¶ 1, 5; Tab G, at pp. 49-58. The Respondent also noted that he has three (3) children who are residing with him in the United States, enrolled in school full time in Maryland, and who depend on the Respondent for financial and emotional support.[2] *See* Exh. 2, ¶¶ 1, 7; Tab C, at pp. 25-28, Tab D at pp. 29-34.

As part of his bond motion, the Respondent argued that he was not a danger to the community because he has no criminal record. The Respondent's traffic record consists only of a minor traffic offense for driving without a license from 20##. *See* Exh. 2, ¶¶ 10, 11; Tab J, at pp. 83-89. However, Respondent argued that he took all the necessary classes, including a Driver Improvement Program and a 3-Hour Alcohol and Drug Education course in order to obtain his valid Maryland driver's license. *See* Exh. 2, Tab J, at p. 87. Additionally, Respondent contended that he has no history of immigration violations other than entering the United States on or around 20## without valid status. *See* Exh. 1, NTA.

In addition, Respondent argued that he is a person of good moral character, has strong ties to the community, and does not present a danger to the community. *See* Exh. 2, ¶¶ 8, 9, 10, 11. Respondent also maintained that he supports his long-term partner of [number] (##) years, [First Name Last Name], along with her [number] (#) U.S. citizen children, both emotionally and financially. *See* Exh. 2, ¶ 8; Tab H, at pp. 59-64. Respondent provided the Court below with evidence of being gainfully employed with [Employer Name] as a carpenter subcontractor. *See*

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[2] Respondent's children are [First Name Last Name], age ##, [First Name Last Name], age ##, and [First Name Last Name], age ##.

Exh. 2, ¶ 6; Tabs F, H. In addition, the Respondent introduced letters of support from friends that discussed the Respondent's strong reputation in the community. *See* Exh. 2, ¶ 9; Tab at H, pp. 65-70.

Respondent further stated that he has been diligently taking his children to immigration court for their removal proceedings, as evidence that he is not a flight risk and planned to attend his own removal proceedings as well. *See* Exh. 2, ¶ 12. Furthermore, the Respondent also indicated that he has every incentive to appear to his immigration hearings as he has several forms of relief available to him. Respondent will be seeking the relief in the form of asylum, withholding of removal, and protection under the Convention Against Torture (CAT). *See* Exh. 2, ¶ 12. In addition to those avenues of relief, Respondent's counsel was also evaluating Respondent's eligibility for a U visa nonimmigrant status, and cancellation of removal for nonpermanent residents. ***Id.***

At the bond hearing on April ##, 20##, the DHS presented no arguments to support its initial bond determination that Respondent should be held under no bond, and confirmed the Respondent's lack of criminal records or arrests. Instead, the DHS told the IJ that it would defer to the Court on bond redetermination. The DHS submitted to the court, for filing, Form I-213, Record of Deportable/Inadmissible Alien. *See* Exh. 3. Respondent's counsel objected to the admission of Form I-213 on the basis of its unreliability and probative value. Indeed, the I-213 contained errors and irrelevant information which called into question the reliability and lack of probative value. The IJ admitted Form I-213 into evidence over counsel's objection. The IJ then found that while Respondent was not a danger to the community, the Respondent was a flight risk,[3]

[3] As the IJ set a bond and cited a reason for the high bond amount in line with the flight risk factor prong analysis, the IJ necessarily found that the Respondent was not a danger to the community or posed a public safety risk. *See Matter of Drysdale,* 20 I&N Dec. 815 (BIA 1994).

because of the speculative nature of the various forms of relief and the lack of any immediate relatives having any lawful status in the U.S. As such, the IJ reasoned that a bond of $##,### was appropriate to ensure that the Respondent appears at future immigration courts hearings. *See* IJ Bond Memorandum, at p. 3 (June ##, 20##). The IJ, however, did not address any other factors relating to whether Respondent merited a release on bond under *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). On April ##, 20##, the Respondent posted the $##,### bond. Respondent filed a timely Notice of Appeal of the bond decision on May ##, 20##. On June ##, 20##, the IJ issued a bond memorandum in support of the prior order issuing Respondent's $##,### bond. The Board of Immigration Appeals ("BIA" or "Board") thereafter issued a briefing schedule. The Respondent filed a motion to extend the filing deadline which was granted through July ##, 20## which the BIA granted on July ##, 20##. Respondent now submits this brief in support of his bond appeal. Respondent asks the Board to reduce his bond amount from $##,###, an unreasonable amount, to $1,500.00, or a reasonable low bond amount not more than $5,000.00

STATEMENT OF ISSUES

1. Whether the IJ erred in setting a $##,### bond based on a finding that Respondent's only motivation to appear in court was by setting a high bond because the Court deemed Respondent's relief to be limited and speculative.
2. Whether the IJ erred in allowing the admission of Form I-213, given that the form unreliable given that it contained irrelevant and incorrect information that was more prejudicial than probative.

STANDARD OF REVIEW

Factual findings, including adverse credibility determinations, are reviewed for clear error. 8 C.F.R. 1003.1(d)(3)(i). *See also Matter of S-H-*, 23 I&N Dec. 462, 464-65 (BIA 2002). Questions

of law, discretion, and judgment and all other issues are reviewed *de novo*. 8 C.F.R. 1003.1(d)(3)(ii).

SUMMARY OF THE ARGUMENT

In *Matter of Patel,* the Board noted that to release an individual on bond, an IJ must consider whether the individual is a danger to the community and presents a flight risk. 15 I&N Dec. 666 (BIA 1976). In *Matter of Guerra,* the Board indicated that there are a number of factors that an IJ may take into consideration to evaluate a Respondent's danger to the community and flight risk. *See Matter of Guerra*, 25 I&N Dec. 37, 40 (BIA 2006). The IJ has discretion in how the factors are weighed, but the Judge's decision must be reasonable. *Id.* Here, the IJ made the bond determination based solely on one factor: the finding that Respondent's relief is limited and speculative. Based on that finding alone, the IJ found that Respondent presented a risk of flight, and set his bond amount to $##,###.[4] The IJ's decision is unreasonable, as the Court should have considered the other factors that weigh heavily in favor of Respondent not being a flight risk and negating the need for a high bond amount. Furthermore, the IJ should not have found that Respondent's relief is limited and speculative, as Respondent has different avenues for relief.

Moreover, the IJ erred in admitting Form I-213 because it failed the test of admissibility and was inherently unreliable, and more prejudicial than probative. In *Matter of Barcenas,* the Board indicated that the test for admissibility of documentary evidence in deportation proceedings is "that evidence must be probative and that its use must be fundamentally fair." 19 I&N Dec. 609, 611 (BIA 1980). In the same case, the Board also held that Form I-213 is inherently trustworthy

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[4] As stated, *supra* note 3, the IJ necessarily concluded that Respondent did not pose a danger to the community or was otherwise a public safety risk. *Cf. Matter of Drysdale,* 20 I&N Dec. 815 (BIA 1994); *Matter of Patel,* 15 I&N Dec., at 666.

and admissible as evidence to prove alienage and deportability *unless* it contains information that is incorrect or was obtained by coercion or duress. *Id.* Here, Respondent's I-213 Form had incorrect information, as well as prejudicial and irrelevant information regarding Respondent's family member's criminal record that presented Respondent in a negative light to the Immigration Judge. Such information is fundamentally unfair because it has the potential to influence the Judge to rule in favor of a high bond based on a criminal record that did not relate to the Respondent. Furthermore, in this matter, the Form I-213 contained glaring and material mistakes that Respondent's counsel objected to during the bond hearing. Such mistakes render the Form I-213 inherently untrustworthy.

ARGUMENT

I. The IJ erred in setting Respondent's bond to $##,###, as the Court failed to consider several relevant factors that demonstrate that Respondent is not a flight risk.

The Board has determined that "[a]n alien generally is and should not be detained or required to post bond except on a finding that he is a threat to the national security, or that he is a poor bail risk." *Matter of Patel,* 15 I&N Dec. 666, 666 (BIA). In the present case, the IJ found Respondent not to be a danger to the community. Instead, the IJ made the bond determination on a finding that Respondent's eligibility for relief was limited or speculative, and thus he presented a flight risk. For that reason, the IJ found that Respondent's only incentive to appear in Immigration Court was by setting a high bond amount of $##,###. However, the IJ impermissibly accorded significant weight to this finding while failing to accord any weight to other evidence and relevant factors supporting the low flight risk that Respondent presented. Even assuming, *arguendo*, that the IJ was correct in so far as that Respondent's relief being speculative, the IJ erred by giving no weight to the overwhelming evidence that Respondent will not flee or abscond and be present at his future hearings.

In *Matter of Guerra*, the BIA set forth a list of non-exhaustive but relevant factors that an IJ may consider in making a bond redetermination. Those factors include: (1) whether the alien has a fixed address in the United States; (2) the alien's length of residence in the United States; (3) the alien's family ties in the United States, and whether they may entitle the alien to reside permanently in the United States in the future; (4) the alien's employment history; (5) the alien's record of appearance in court; (6) the alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses; (7) the alien's history of immigration violations; (8) any attempts by the alien to flee prosecution or otherwise escape from authorities; and (9) the alien's manner of entry to the United States. 24 I&N Dec., at 40. Another factor that may be considered during bond proceedings is the relief available to a Respondent. *Matter of Andrade*, 19 I&N Dec. 488, 490 (BIA 1987) (noting that "a respondent with a greater likelihood of being granted relief from deportation has a greater motivation to appear for a deportation hearing than one who, based on a criminal record or otherwise, has less potential of being granted such relief.").

While an IJ has broad discretion according weight to these factors that are considered in bond proceedings in determining a bond amount, the Immigration Judge's decision must be *reasonable*. *See Matter of Guerra*, 25 I&N Dec. at 40. In some cases, the BIA has found lack of prospective relief as a serious factor mitigating a respondent's release under minimal bond; however, even in those cases it has not taken the lack of prospective relief to be the sole determining factor of the bond amount. In *Adrian Costales Mendoza*, for example, the BIA found that the lack of prospective relief, along with the serious nature of the respondent's criminal conviction for an offense related to possessing or knowingly viewing child pornography merited a $20,000 bond. *See Adrian Costales Mendoza*, A56-109-196 (BIA June 1, 2007) (Exhibit A). Thus,

the BIA took into consideration various *Guerra* factors rather than just the sole factor relating to the Respondent's eligibility (or limited) options for relief, in setting a high bond.

Moreover, the BIA has considered positive factors in favor of Respondent even in cases where the relief might have been limited or nonexistent. In *Carlos Antonio Taracena*, the DHS argued that the IJ erred in releasing the Respondent on a $4,000 bond because the Respondent might have been ineligible for the relief he sought. *See Carlos Antonio Taracena,* A092-446-911 (BIA Feb. 28, 2011) (Exhibit B). The BIA found that because Respondent had resided in the U.S. for over twenty (20) years, was married to a U.S. citizen, had a history of paying income taxes, and introduced letters demonstrating his strong ties to the community and evidence of stable work history, the Respondent did not present a risk of flight that would warrant a bond of over $4,000. *Id.* The BIA did not even address the potential relief, or lack of thereof, but instead concentrated on the positive factors to uphold a relatively low bond. Similarly, in *Salvador Jr. Villarruel*, the BIA noted that the IJ had based his decision to deny bond solely on Respondent's lack of eligibility to any form of relief, including his claimed potential relief of adjustment of status. *See Salvador Jr. Villarruel*, A092-722-54 (March 17, 2011) (Exhibit C). However, on appeal the BIA looked at other factors favorable to him such as his ties to the community, stable employment, family ties, and determined that Respondent's flight risk did not warrant a bond denial. *Id.*

In this case, the IJ set an unreasonable bond in the amount of $##,### and erred in using her findings of Respondent's limited relief as the sole determining factor to justify that Respondent was a flight risk, while disregarding the evidence in the record supporting that he in fact is not a flight risk and is very likely to appear at all future hearings. As noted above, the BIA set a bond of $##,## where a Respondent's lack of prospective relief was accompanied with serious criminal charges. *See Adrian Costales Mendoza*, A56-109-196 (BIA June 1, 2007). Here, even assuming

that the IJ was right in finding that Respondent's relief is limited, Respondent does not have a criminal record that would warrant a similar bond.

Moreover, as stated, the Respondent presented evidence that the IJ failed to consider a finding that he was at low risk of absconding. In his motion, Respondent presented evidence supporting several positive factors, under *Matter of Guerra,* that were never disputed by the DHS. First, Respondent is a long time resident of the United States for over ## years, and specifically of [---] County, Maryland. Respondent does not intend to leave his residency, thus greatly decreasing a risk to abscond. Through his bond motion, Respondent provided evidence that he has lived in the U.S., uninterruptedly and continuously, for [number] (##) years. Respondent entered the U.S. in or around April 20##. *See* Exh. 2, Tab G. Furthermore, Respondent has a fixed address in [City], Maryland, and has maintained residence primarily in this state since his arrival to the country. Respondent has been living in his current address with his [number] (#) children since approximately the end of 2016 as evidenced by his lease agreement. *Id.* Before this, Respondent lived in the same apartment complex, and prior to that, Respondent lived in [City], Maryland for approximately [number] (#) years. Respondent has paid federal and Maryland income taxes. In fact, the Respondent has returned to his residence in [City] since being released on bond. Thus, Respondent has a significant length of residence in Maryland, and specifically in [---] County, Maryland, where he has resided for at least [number] (#) years. That is where his family and community ties are located, and he has no desire to leave them.

Furthermore, Respondent is the sole caretaker and provider of his [number] (#) children, who reside with him in the U.S. He has no intention of abandoning them or removing them from their community, where they are enrolled in school. In the bond memorandum, the IJ states that the Respondent's children "entered the U.S. unlawfully in the recent past and questions remain

concerning any role [the Respondent] may have played in their entry into the county." *See* IJ Bond Memorandum at 2 (Jun. ##, 20##). As an initial matter, Respondent notes that the IJ did not raise this concern during the bond proceedings below. That the IJ mentions this in the bond memorandum is curious. Nevertheless, assuming the Court now justifies its decision on this additional basis, the Respondent submits that a *post hoc* rational is fundamentally unfair. As stated, given that the IJ did not raise or question the Respondent in regard to the circumstances surrounding the children's arrival during the bond hearing, Respondent was not afforded an opportunity to address the Immigration Judge's concern. Of note, two of the children submitted sworn and notarized affidavits in which they addressed their entry into the United States and both state that their father had no knowledge of their travel to the United States. *See* Exh. 2, Tab B, at pp. 5, 10. Respondent's children are unaccompanied minors, and the Office of Refugee Resettlement designated Respondent as their sponsor. Respondent thus fully addressed and presented evidence that was not challenged during the course of the bond proceedings below.

Respondent's children depend on him for financial and emotional support. Respondent does not intend to uproot his children from the stable life that they have finally been able to accomplish with Respondent or leave his children to fend for themselves. They give him great reason to remain in his community, even through his own immigration proceedings. Moreover, Respondent has been ensuring the attendance of his sons to the immigration court hearings in their cases by accompanying them as their father and sponsor—another relevant factor the IJ failed to consider.

Furthermore, Respondent has other strong ties to the community that ensure that he will appear in immigration court even with a low bond. Respondent supports his long-term partner, [First Name Last Name], and her [number] (#) U.S. citizen children both financially and

emotionally. He is like a father to his girlfriend's children. As proof, Respondent submitted letters from [First Name]'s children where they call him "a caring man," "part of their family" and a "second father." *See* Exh. 2, Tab H, at pp. 59-63. Respondent has a sense of responsibility for them, and it is Respondent's desire to continue providing for them. Respondent's emotional and financial ties to his girlfriend and her children, greatly minimize any risk that the Respondent would flee.

Besides these ties, Respondent has other significant and strong ties to the community. In support of his motion, Respondent introduced letters from friends, legal residents of [---] County, Maryland, who have known him for several years. They speak highly of Respondent's character. *See* Exh. 2, Tab H, at pp. 75-60. Such letters support the contention that Respondent has a circle of support that he intends to keep while fighting his immigration case.

Moreover, Respondent does not have an intention to flee as he currently holds stable and permanent employment in [---] County, Maryland. In his motion, Respondent indicated that he has maintained gainful and stable employment. He has been working as a subcontractor in the same job since at least August 20## and before that as a subcontractor with other local companies. *See* Exh. 2, Tab F. Since being released, Respondent has gone back to work at the same location as an independent subcontractor. Prior to that Respondent has also been employed in other locations in [---] County, Maryland before his current job. *Id.* Respondent intends to keep supporting his children, his girlfriend, and her children with the income obtained through this job. Thus, he has a great motivation to remain in the area.

Moreover, Respondent has never attempted to flee from prosecution or missed a court date, further supporting Respondent's likelihood of appearing in court. Respondent does not have a criminal record. The only offense on Respondent's record is a minor traffic offense for driving

without a license in 20##. Even in those proceedings, there is no indication that Respondent failed to appear in court. To the contrary, Respondent pled guilty, and took the necessary steps to obtain his driver's license. All such evidence was submitted to the Court in the bond proceedings below. *See* Exh. 2, Tab J.

Respondent has no history of immigration violations other than entering the U.S. without valid status in 20##. Before this case, Respondent had never been placed in immigration proceedings or had any contact with immigration officials relative to his own immigration status. Furthermore, Respondent has demonstrated that he understands his obligation to appear in court. As stated, this is evidenced by the fact that Respondent has diligently been taking his children to immigration court and hired counsel for them prior to himself having been placed in removal proceedings. Thus, Respondent will not flee and attend all hearing in his removal proceedings.

None of the above factors and evidence in support, were disputed by the DHS, which deferred to the IJ in terms of the bond redetermination. These factors weigh heavily in favor of Respondent's low risk of flight under *Matter of Guerra*. However, the IJ erroneously focused only on the forms of relief available to the Respondent in deciding to set the bond in the amount of $##,###. However, had the other factors been appropriately considered, the IJ would have determined that Respondent's does not present a flight risk, and his bond should have been set to $1,500.00 or a reasonable low bond amount not more than $5,000.00.

II. Even if potential relief was the only factor that the IJ should have considered, the IJ erred in finding that Respondent's relief is "limited and speculative."

Contrary to the IJ's conclusion, Respondent's relief is not limited, as Respondent has several potential avenues of relief. As noted in *Matter of Andrade*, respondents with a greater likelihood of being granted relief from deportation have a greater motivation to appear for a deportation hearing than someone "who, based on a criminal record or otherwise, has less potential

of being granted such relief." *See Matter of Andrade*, 19 I&N Dec. 488, 490 (BIA 1987). In *Marcelino Simbron-Sanchez*, the IJ found that respondent's incentive to appear in court was mitigated because respondent's avenues of relief were limited. However, although respondent was only eligible for cancellation of removal and voluntary departure, the Board, without delving into the merits of those avenues of relief, found that those avenues of relief were "an incentive to attend future proceedings." *See Marcelino Simbron-Sanchez*, A201-029-423 (BIA April 21, 2011) (Exhibit D). Here, Respondent has the potential to qualify for several avenues of relief, and thus, his relief is not limited. They are incentives for him to appear in court.

In his bond motion below, Respondent indicated that he will be applying for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). The IJ found that because Respondent's asylum might be subject to a one-year bar, a withholding application would necessarily have a heightened standard. *See* IJ Bond Memorandum at 3. Respondent has expressed fear of being returned to his home country and is eligible to apply for such relief.[5] Furthermore, Respondent also indicated that he may be seeking other forms of relief. Specifically, Respondent's counsel advised the Court that he was looking into the possibility of the U visa since the Respondent had been a victim of an armed robbery in [State] that landed him in the hospital when a bullet grazed his head. The IJ found that this form of relief was speculative because the Respondent had not yet filed for a U visa, and so relief on this basis was uncertain. *Id.* Respondent also proposed that if he married his girlfriend he would become eligible for cancellation of removal for nonpermanent residents as a third form of relief to him. A sworn affidavit from the

[5] Form I-213 erroneously indicates that Respondent has no fear of returning to Guatemala. This a mistake that Respondent's counsel objected to during the proceedings and further calls into question the reliability of Respondent's Form I-213.

Respondent's girlfriend, [First Name Last Name], was submitted as evidence of their committed relationship for the last two years and the viability of a marriage between them. *See* Exh. 2, Tab B, at pp. 15-16. Sworn affidavits from Ms. [Last Name]'s oldest children were also submitted evidencing the relationship of the Respondent with Ms. [Last Name], as well as providing examples of the hardship that the children had faced and how the Respondent had previously supported them. *See* Exh. 2, Tab H, at pp. 59-64. The DHS did not contest or argue that Respondent would be statutorily ineligible to qualify for these avenues of relief during the course of the removal proceedings. The IJ however, disregarded the evidence and stated that the Respondent "has never married his girlfriend, and any relief based on marriage to her is speculative and attenuated." *See* IJ Bond Memorandum, at p. 3. Furthermore, Respondent has not committed any crimes that would automatically bar him from any potential relief that he will seek. Any speculation over the likelihood of Respondent being granted such relief is unmerited at this point, as Respondent has not had the opportunity to present the merits of his case to the Immigration Judge.

Thus, Respondent has at least three (3) forms of possible avenues of relief that should have been viewed in his favor. While counsel for Respondent is in the beginning stages of determining his eligibility for applying for such relief, those avenues make the Respondent more willing to cooperate with counsel and show up to each and all of his hearings, and thus not miss the opportunity of receiving favorable relief. Such potential avenues for relief, like in *Marcelino Simbron-Sanchez,* are incentives for Respondent to attend his immigration proceedings.

III. The IJ erred by allowing the admission of Form I-213 during the bond hearing, as the Form failed the admissibility test.

The IJ erred in allowing the admission of Form I-213 in Respondent's bond hearing because it included irrelevant information that fails the test of admissibility of evidence. In *Matter*

of Barcenas, the BIA indicated that the test for admissibility of documentary evidence in deportation proceedings is "that evidence must be probative and that its use must be fundamentally fair." 19 I&N Dec. 609, 611 (BIA 1980) (citations omitted); *see also, Matter of Toro,* 17 I&N Dec. 340, 343 (BIA 1980) (noting that "to be admissible in deportation proceedings, evidence must be probative and its use fundamentally fair so as to not deprive respondents of due process of law as mandated by the fifth amendment."); *Matter of Hussam Fatahi,* 26 I&N Dec. 791 (BIA 2016) (citing *Matter of Guerra*, 24 I&N Dec. 37, at 40−41 (BIA 2006)) (noting that in determining whether to release an alien on bond, "[a]ny evidence in the record that is probative and specific can be considered.").

In the present case, the IJ should not have admitted Form I-213 as part of the record because it included information irrelevant to Respondent's bond proceedings. Respondent's Form I-213 notes that Respondent's brother was charged with driving under the influence, and that Respondent's son had criminal charges pending against him. *See* Exh. 3 at pp. 2-3. However, Respondent's family members' alleged criminal record is irrelevant to his bond proceedings as such information does not have any weight on whether Respondent is a danger to the community or a flight risk. *Matter of Patel*, 15 I&N Dec. 666 (BIA 1976). None of the allegations against Respondent's family members apply directly to Respondent's character, and thus lack the potential to prove that Respondent is more or less likely to be a danger to the community or that he presents a risk to abscond.

Moreover, admitting such information is more prejudicial than probative to the Respondent because it has the potential to portray the Respondent negatively in the eyes of the Immigration Judge, due to his family members' history. A criminal record of Respondent's family could have directly or indirectly influenced the Immigration Judge's decision to set a high bond. This

information is fundamentally unfair to the Respondent, as he should not be penalized for his family's alleged conduct.[6] Therefore, because the information regarding Respondent's family members' criminal record is not probative and is fundamentally unfair to Respondent, it fails the test of admissibility of evidence. Thus, the IJ should not have admitted Form I-213.

IV. The IJ erred in allowing the admission of Form I-213 during bond proceedings, as it contained glaring and material errors that prevent it from being inherently reliable and admissible for Bond proceedings.

The Form I-213 filed by DHS contained obvious and material errors that make it inaccurate and unreliable, and therefore inadmissible for bond proceedings. In *Matter of Barcenas,* the BIA noted that "absent any indication that a Form I-213 contains information that is *incorrect* or was obtained by coercion or duress, that document is inherently trustworthy and admissible as evidence to prove alienage and deportability." 19 I&N Dec. 609, 611 (BIA 1980) (emphasis added). Based on that principle, in *Matter of Hussam Fatahi*, the Board found no error in the admission of Form I-213 during bond proceedings, because the Respondent presented no evidence to show that the form was inaccurate or otherwise unreliable. 26 I&N Dec. 791 (BIA 2016). In *Pouhova v. Holder*, the Seventh Circuit noted other specific examples where Form I–213 may not be inherently reliable, including where "it may contain information that is known to be incorrect, it may have been obtained by coercion or duress, it may have been drafted carelessly or maliciously, it may mischaracterize or misstate material information or seem suspicious, or the evidence may have been obtained from someone other than the alien who is the subject of the form." 726 F.3d 1007, 1013 (7th Cir. 2013). Thus, I-213 forms that contain errors are not inherently reliable and should not be admitted.

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[6] [Redacted]

Here, Respondent's Form I-213 is not inherently reliable because it included incorrect information, which Respondent's counsel objected to during the bond proceedings. First, Form I-213 includes the wrong entry date of Respondent to the United States. The form indicates that Respondent entered the United States in 20##. However, Respondent entered the United States on or around April 20##, which was noted by counsel during the hearing. Second, the form incorrectly states that Respondent made a phone call to his attorney, who was identified as [First Name Last Name]. This person is neither known to Respondent or counsel.

More notably, Form I-213 erroneously states that Respondent does not have a fear of being returned to his home country, [Country]. Respondent, in fact, does have a fear of being forced to return to [Country], as explained above, and he is has indicated his intent to pursue asylum, withholding of removal, and protection under the Convention Against Torture (CAT). This is a material error as such relief could be crucial to Respondent's ability to stay in the United States. Respondent's counsel noted those errors in open court during the bond hearing. None of the noted errors were disputed by the DHS. Thus, because there is an indication that the form has incorrect information, the presumption that Form I-213 is inherently trustworthy for this case has been rebutted. Therefore, Form I-213 should not have been admitted in the proceedings.

CONCLUSION

For the foregoing reasons, the Board should lower Respondent's bond to $1,500.00 or a reasonable low bond amount of no more than $5,000.00. Respondent does not present a safety risk or a risk to abscond.

August ##, 20##

Respectfully submitted,

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PROOF OF SERVICE

On August ##, 20##, I, Himedes V. Chicas, mailed or delivered a copy of this Brief and any attached pages to the U.S. Department of Homeland Security, Office of the Chief Counsel at 31 Hopkins Plaza, Room 1600, Baltimore, MD, 21201, by U.S. Postal Service.

_____ _____

Himedes V. Chicas Date