United States Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals
Falls Church, Virginia 22041

File: A11 655 361 - Miami

JUN 17 1985

In re: KONRADS KALEJS

IN BOND PROCEEDINGS PURSUANT TO 8 C.F.R. § 242.2(b)

MOTION

ON BEHALF OF RESPONDENT: Ivars Berzins, Esquire
484 West Montauk Highway
Babylon, New York 11702

ON BEHALF OF SERVICE: Jeffrey N. Mausner
Acting Appellate Trial Attorney

APPLICATION: Motion to reopen and reconsider

This case is before the Board on a motion of the respondent to reopen and reconsider our order of May 17, 1985, directing that the respondent be detained without bond. The respondent's motion will be granted and he will be ordered released upon posting a $750,000 bond.

The respondent is a 72-year-old male, a native of Latvia and citizen of Australia. He was admitted to the United States as a lawful permanent resident on February 6, 1959. On October 29, 1984, an Order to Show Cause was issued charging him with deportability under sections 241(a)(1), (2), and (19) of the Immigration and Nationality Act, 8 U.S.C. §§ 1251(a)(1), (2), and (19), respectively.

The respondent, with knowledge that the Order to Show Cause was about to be issued, went into hiding to avoid having it served upon him. The government made substantial efforts to locate the respondent and serve the Order to Show Cause. The Order to Show Cause was served by a number of alternate means, and a warrant was issued for the respondent's arrest. A deportation hearing was scheduled for April 10, 1985, and the respondent was given notice by certified mail and his present attorney was notified by telephone. The respondent did not appear. He was apprehended on April 19, 1985, in Miami Beach, Florida, by officers of the United States Marshal Service. He was apprehended in a motel in which he was staying under a name other than his own. The district director ordered him detained without bond and the respondent requested a bond redetermination before an immigration judge. In a decision dated April 23, 1985, an immigration judge found the respondent to be an

extremely poor bail risk and denied his request for a change in custody status, leaving him detained. The respondent appealed. In an order dated May 17, 1985, we dismissed the respondent's appeal. The respondent now moves us to reopen and reconsider our decision of May 17, 1985.

When we last considered this case, counsel for the respondent indicated that the respondent might be willing to tie up virtually all of his assets to secure his release. However, he could offer no accounting of the respondent's assets. The respondent offers such an accounting in support of this motion to reopen. The accounting is provided in the form of an affidavit by Austra Kalnins, a woman with whom the respondent has been living and with whom he jointly owns most of his assets. 1/ In another affidavit, counsel for the respondent states that he read Austra Kalnins' affidavit to the respondent over the telephone and received the respondent's assurance that the information relative to his assets is accurate and complete with the exception of the fair market value of two of the properties. The respondent indicated that he thought the fair market value of these two properties was overstated by a total of $70,000. 2/ In a second affidavit, Austra Kalnins states that she and the respondent have decided to be married in the event he is released on bond, or if he is not released on bond, then they plan to be married in the Krome Detention Center. She also states that she and her daughter, Dzintra Kalnins, are willing to pledge their respective interests in the properties owned jointly with the respondent, to secure his release, except for a money market account which contains money that Ms. Kalnins considers necessary to meet living expenses and pay for the respondent's defense in these deportation proceedings. 3/

1/ Austra Kalnins' affidavit indicates that two of the properties owned by the respondent are owned jointly with Dzintra Kalnins, Austra Kalnins' daughter.

2/ For purposes of our decision, we will use the respondent's estimation of the fair market value of the properties in question.

3/ The respondent also submitted copies of hospital records in support of his claimed poor health. This evidence is of no significance to our decision today because we assumed the respondent's health to be as he claimed when this case was last before us. See our order of May 17, 1985, n.2.

In his motion the respondent also complains that the deportation hearing schedule set by the immigration judge deprives him of the effective assistance of counsel because it does not allow sufficient time for counsel to prepare. We are concerned here with whether the respondent can be released on bond. If the immigration judge's hearing schedule causes the respondent prejudice, that matter can be raised on appeal from that decision. However, we will not consider the immigration judge's deportation hearing schedule in connection with this motion in bond proceedings.

The Service opposes the respondent's motion because it finds the accounting of the respondent's assets to lack reliability. It points out that the respondent, the most knowledgable person concerning his assets, has not submitted an affidavit. The Service contends that Ms. Kalnins is not credible. It contends that she lied to investigators looking for the respondent while he was in hiding and she is now facing criminal charges for concealing the respondent from arrest. She purportedly once indicated that she would get the respondent out on bond and go to the islands.

The Service is also concerned that the respondent may have other assets about which Ms. Kalnins may be unaware. It contends that the respondent moved large sums of money prior to his arrest and the government does not know the present location of all that money. The Service contends the amount of money the respondent wishes to retain for living expenses and to pay for his defense is substantial, and there is no reason to believe that he does not intend to abscond with it.

Although the Service's concerns are not without foundation, we find the respondent's new evidence persuasive. When this matter was last before us, there was no evidence regarding the nature and extent of the respondent's assets. Significant assets have now been identified and the respondent, through counsel, has indicated his willingness to pledge all of his assets with the exception of a sum of money he considers necessary to meet living expenses and attorney's fees. Considering this evidence and the willingness of Ms. Kalnins and her daughter to pledge their substantial interests in the jointly-owned property, we conclude that an immigration bond in the amount of $750,000 will offer reasonable assurance that the respondent will remain available for deportation proceedings notwithstanding his actions in avoiding service of the Order to Show Cause and his prior failure to appear for a deportation hearing.

Accordingly, the following order will be entered.

ORDER: The respondent's motion to reopen and reconsider is granted.

FURTHER ORDER: The respondent shall be released from custody upon posting bond in the amount of $750,000.

David L. Milhollan

Chairman

United States Department of Justice
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CONCURRING OPINION: Fred W. Vacca, Board Member

In a decision dated May 17, 1985, the majority of the members of the Board of Immigration Appeals dismissed the respondent's appeal from an order of an immigration judge dated April 23, 1985, which, in effect, continued the detention of the respondent without bond. Board members James P. Morris and Fred W. Vacca dissented from that decision and held that the respondent's appeal should be sustained and that the respondent should be released upon the posting of a bond in the amount of $200,000. Following the issuance of the majority's order, the respondent filed a motion with the Board on May 28, 1985, in which he requests that the proceedings be reopened and that the prior decision of the majority be reconsidered. In its decision, the majority grants the respondent's motion to reopen and reconsider and orders that the respondent shall be released from custody upon posting bond in the amount of $750,000. I concur in the majority's decision to grant the respondent's motion. I also agree with the majority's recommendation that the respondent should be released from custody upon the posting of a bond. However, I do not concur in the amount set by the majority. In my view, $750,000 is grossly excessive and I construe it as punitive in nature in light of the facts and circumstances of this case. Accordingly, I would set the amount of the bond at $300,000.

The respondent is 72 years old. He was admitted to the United States as a lawful permanent resident on February 6, 1959. The respondent is a native of Latvia and a citizen of Australia. He is currently detained at the Immigration and Naturalization Service Krome North Center Detention Center in the state of Florida. The respondent is unmarried, but plans to marry one Austra Kalnins, a close friend, upon his release from custody.

The respondent is the subject of deportation proceedings initiated by a district director's issuance of an Order to Show Cause on October 29, 1984. Although a verbatim record of these bond proceedings was not made, there is evidence in the file to show that the Service experienced considerable difficulty in contacting the respondent after the issuance of the Order to Show Cause. There is also evidence in the record to show that the respondent traveled to Canada and Australia and then returned to the United States during

this time frame. An arrest warrant was issued for the respondent on February 22, 1985, after the Service was unable to locate him. He was subsequently apprehended on April 19, 1985, by an assistant United States Marshal while residing at a motel in Miami Beach, Florida. The respondent was registered at the motel under a name other than his own. He has been in detention since his apprehension.

While the evidence suggests that the respondent avoided service of the Order to Show Cause, I view that as one of several significant factors to be considered in determining whether he should be released from custody, and if so, what an appropriate amount of bond should be. The Board has held that an alien generally should not be detained or required to post bond pending a determination of deportability unless there is a finding that he is a threat to national security or a poor bail risk. Matter of Patel, 15 I&N Dec. 666 (BIA 1976); see Matter of Vea, 18 I&N Dec. 171 (BIA 1981). In determining the necessity for and amount of bond, such factors as a stable employment history, the length of residence in the community, the existence of family ties, a record of nonappearance at court proceedings, and the nature of the respondent's criminal or immigration law history may properly be considered. See Matter of Shaw, 17 I&N Dec. 177 (BIA 1979); Matter of Patel, supra; Matter of San Martin, 15 I&N Dec. 167 (BIA 1974); Matter of Moise, 12 I&N Dec. 102 (BIA 1967).

The respondent is an elderly person. For the last 26 of his 72 years, he has continuously resided either in the state of Illinois or the state of Florida. Until his retirement in 1983, he had stable and gainful employment. The respondent has apparently paid his taxes and saved his money. He and his friend, Austra Kalnins, jointly own about $1,000,000 in assets. Approximately $600,000 of those assets represent real property holdings. He derives his income from a pension and the interest from his investments. The respondent has had peptic ulcer disease in the past and a recent medical history of phlebitis of the leg and gall bladder stones associated with stomach pain. His general health is considered less than average for a man of his age. There is no record of arrests or convictions for crimes committed in the United States. Apart from the Order to Show Cause he is facing now, there is no evidence of an adverse immigration history. The respondent has a nephew living in the United States and close friendships which he has acquired over a 25-year period.

In my opinion the respondent and his friend, Austra Kalnins, have been straightforward in declaring the nature and extent of their jointly owned assets. In today's economy, their

jointly held assets represent not much more than a modest accumulation following a lifetime of saving and investing. The respondent has also been earnest in his offer to pledge substantial amounts of his assets to insure his presence at future immigration proceedings. He will no doubt incur significantly high legal bills and other expenses in the near future. The respondent has engaged an experienced and capable attorney to represent him in the deportation proceedings. I am convinced that the respondent is determined to pursue his lawful remedies to the fullest extent. In light of the nature and circumstances of the deportation proceedings, it is realistic to believe that the hearing and appellate proceedings that may follow may take many months, perhaps years before final resolution. Under these circumstances, I believe it is unnecessary, unreasonable, and unfair to deprive the respondent and his friend of the use and enjoyment of nearly three quarters of their jointly held assets for what most probably will be a long, protracted period. While I view his apparent attempted avoidance of the service of his Order to Show Cause as a serious negative factor, I must balance this against his age, health, long term residence and the other positive factors which I have previously discussed. Therefore, I would release the respondent upon the posting of a substantial bond. I believe that the $750,000 amount ordered by the majority is tantamount to a punishment and represents an overreaction to the facts of this case. I conclude that a $300,000 bond is reasonable and sufficient to assure the respondent's appearances at subsequent proceedings instituted by the Service.

For the foregoing reasons, I would grant the respondent's motion and release the respondent from custody upon the posting of a bond in the amount of $300,000.

Fred W. Vacca
Board Member

I concur in the foregoing opinion.

James P. Morris
Board Member