

**UNITED STATES DEPARTMENT OF JUSTICE
Executive Office for Immigration Review
Tacoma Immigration Court
Tacoma, Washington**

File No. [REDACTED]

In the Matter of:

[REDACTED]
Respondent

In Bond Proceedings

DETAINED

Bond Memorandum of the Immigration Judge

The court conducted a bond hearing on February 14, 2023, at the request of the respondent. The court denied the request for bond redetermination. The respondent filed an appeal of the decision.

The respondent is a native and citizen of [REDACTED]. He last entered the United States without being admitted or paroled by an Immigration Officer. Respondent was placed into removal proceedings by the filing of the Notice to Appear on January 31, 2023, charging him with removal under INA §212(a)(6)(A)(i), as a noncitizen present in the United States without being admitted or paroled. The court found it lacks jurisdiction to redetermine bond.

Respondent was recently encountered by Enforcement and Removal Operations in Portland, Oregon on or about February 22, 2021, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Respondent requested a bond redetermination hearing. Respondent submitted numerous documents in support of his bond request. [REDACTED]

[REDACTED]

The court denies respondent's bond redetermination request because it lacks jurisdiction to redetermine Respondent's custody status. Congress requires the detention of all "applicants for admission" who are stopped at the border or a port of entry, or who are "present in the United States" but have "not been admitted."¹ See INA §§ 235(a)(1); 235(b)(1)(B)(ii); (b)(2)(A). If an examining immigration officer determines that a person seeking admission is not "clearly and beyond a doubt entitled to be admitted, the [noncitizen] *shall* be detained for a proceeding under section 240." INA § 235(b)(2)(A) (emphasis added). The Supreme Court interpreted the language of INA § 235(b)(2) as "quite clear" and "mandat[ing] detention of [noncitizens] throughout the completion of applicable proceedings and not just until the moment those proceedings begin." *Jennings v. Rodriguez*, 138 S. Ct. 830, 845-46 (2018). The Court further determined "neither [statute] says anything whatsoever about bond hearings." *Id.* at 842. This makes clear that the custody provision under INA § 235(b)(2)(A) mandates the detention of all inadmissible

¹ "Admission" means a noncitizen's lawful entry into the United States "after inspection by an immigration officer." INA § 101(a)(13)(A). An "applicant for admission" is someone "present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including [a noncitizen] who is brought to the United States after having been interdicted in international or United States waters)[.]" INA § 235(a)(1).

noncitizens and does not impose a specific limit on the length of detention.² *Id.* at 845. This mandate applies to all applicants for admission (with specific exceptions not relevant here) who cannot show they are admissible “clearly and beyond a doubt.”

Respondent asserts that the court has jurisdiction to review his custody status under INA § 236(a). However, INA § 235(b)(2)(A)’s mandatory custody provisions, which apply to applicants for admission like respondent, clearly cannot be read as yielding to the permissive custody provisions of 236(a), which apply to a different class of non-citizens – those who have previously been admitted to the United States and have subsequently become removable. *Compare* INA § 235(b)(2)(A) (“*shall* be detained for a proceeding under section 240”) (emphasis added), with INA § 236(a) (“*may* be arrested and detained pending a decision on whether the alien is to be removed from the United States”) (emphasis added); *see also Jennings* and *Matter of M-S-*, *supra*, n. 3.

Respondent also asserts that he is eligible for a bond hearing because he is not an arriving alien and he has not been transferred from expedited removal proceedings to INA § 240 proceedings. However, INA § 235(b)(2)(A) applies to both arriving aliens and person present in the United States who have not been admitted. *See* INA § 235 (a)(1) (defining “applicants for admission” as including “[a]n alien present in the United States who has not been admitted,” as well as a non-citizen “who arrives in the United States” at a designated port of entry). Finally, INA § 235(b)(2)(A) clearly does not apply to persons in expedited removal proceedings, and it is not limited to persons who were transferred

² Both *Jennings* and *Matter of M-S-* differentiate the discretionary detention provision under INA § 236(a), because that rule governs a separate class of individuals who were not originally placed in expedited removal proceedings but were arrested on a warrant by the Attorney General. *See Jennings*, 138 S. Ct. at 846 (noting INA § 236 applies to noncitizens already in the United States who are arrested and detained pending removal proceedings); *Matter of M-S-*, 27 I&N Dec. at 516 (“[S]ection 235 (under which detention is mandatory) and section 236(a) (under which detention is permissive) can be reconciled only if they apply to different classes of [noncitizens].”

from expedited removal proceedings to INA §240 proceedings. *See* INA § 235(b)(2)(A) and (B)(ii) (specifically excluding persons subject expedited removal proceedings from the provisions of INA § 235(b)(2)(A)).

Based on the evidence at the bond hearing, the court finds that respondent is an “applicant for admission” because he entered the United States without permission, was examined by an immigration officer, and the officer found that respondent was not entitled to be admitted. *See* 8 C.F.R. § 1235.6(a)(1)(i) (indicating that if an examining immigration officer finds an alien is an applicant for admission under INA § 235(b)(2), they will issue an NTA and detain the alien for a proceeding before an immigration judge under INA § 240); *see also Biden v. Texas*, 142 S. Ct. 2528, 2541-42 (2022). In this case, respondent, through counsel, conceded that respondent has never been admitted to the United States. He is therefore an applicant for admission as defined in INA § 235(a)(1). When respondent was encountered and examined by immigration officers, the officers determined that respondent was inadmissible to the United States and place him in removal proceeding under INA § 212(a)(6)(A)(i). Thus, the court has no jurisdiction to redetermine Respondent’s bond.

ORDER

For the forgoing reasons, the respondent’s motion for a custody re-determination is denied. The respondent shall be held without bond.

Date: March 3, 2023

**TAMMY
FITTING**

Tammy L. Fitting
Immigration Judge

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