

## FACTORS UNDER INA § 236(a)

### A. Threshold Requirements:

Before an alien may be released pursuant to INA § 236(a), the alien must demonstrate that he is:

- Not a threat to national security;
- Not a danger to property or persons; and
- Likely to appear for any future proceedings.

*Matter of Guerra*, 24 I&N Dec. 37, 38 (BIA 2006); *Matter of Adeniji*, 22 I&N Dec. 1102, 112-13 (BIA 1999).

### B. Significant Discretionary Factors:

- Fixed address in the United States. *Matter of Patel*, 15 I&N Dec. 666, 667 (BIA 1979), superceded by statute on other grounds as stated in *Matter of Valentin Valdez-Valdez*, 21 I&N Dec. 703 (BIA 1997).
- Length of residence in the United States. *Matter of Shaw*, 17 I&N Dec. 177, 178-79 (BIA 1979). Method of entry. *Matter of San Martin*, 15 I&N Dec. 167, 169 (BIA 1967).
- Family ties in the United States, particularly those who can confer immigration benefits on the alien. *Matter of Shaw*, 17 I&N Dec. 177, 178 (BIA 1979); *Matter of Patel*, 15 I&N Dec. 666, 667 (BIA 1979).
- Employment history in the United States, including length and stability. *Matter of Shaw*, 17 I&N Dec. 177, 178 (BIA 1979); *Matter of Patel*, 15 I&N Dec. 666, 667 (BIA 1979).
- Immigration record. *Matter of Shaw*, 17 I&N Dec. 177, 178 (BIA 1979); *Matter of San Martin*, 15 I&N Dec. 167, 169 (BIA 1974); *Matter of Moise*, 12 I&N Dec. 102, 104-05 (BIA 1967).
- Attempts to escape from authorities or other flight to avoid prosecution. *Matter of Patel*, 15 I&N Dec. 666, 667 (BIA 1979); *Matter of San Martin*, 15 I&N Dec. 167, 168-69 (BIA 1967).
- Prior failures to appear for scheduled court proceedings. *Matter of Shaw*, 17 I&N Dec. 177, 179 (BIA 1979); *Matter of Patel*, 15 I&N Dec. 666, 667 (BIA 1979); *Matter of San Martin*, 15 I&N Dec. 167, 169 (BIA 1967).
- Criminal record, including extensiveness and recency, indicating consistent disrespect for the law and ineligibility for relief from deportation/removal. *Matter of Andrade*, 19 I&N Dec. 488, 490-91 (BIA 1987).

### C. Less Significant Discretionary Factors:

- Early release from prison, parole, or low bond in related criminal proceedings. *Matter of Andrade*, 19 I&N Dec. 488, 490 (BIA 1987); *Matter of Shaw*, 17 I&N Dec. 177, 179 (BIA 1979).
- Ability to pay is not dispositive.

- DHS difficulties in executing a final order of deportation. *Matter of P-C-M-*, 20 I&N Dec. 432, 434 (BIA 1991).