# Matter of S-K-E-, Respondent

*Decided by Board July 28, 2026* [1]

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

(1) The respondent did not demonstrate that summary dismissal of the Department of Homeland Security's appeal was appropriate where he showed no prejudice from electronic service.

(2) The Immigration Judge properly declined to consider documents filed after the merits hearing when the record was left open solely for the filing of other, specified documents and the respondent did not show prejudice from the exclusion of the late documents.

(3) The respondent did not show he was prejudiced by the Immigration Judge qualifying the expert witness in certain areas but not others.

(4) Where the respondent was not credible and did not provide sufficient corroborating evidence regarding his sexual orientation, he did not establish eligibility for protection under the Convention Against Torture on that basis.

FOR THE RESPONDENT: Pro se

FOR THE DEPARTMENT OF HOMELAND SECURITY: Madeline Jack, Assistant Chief Counsel

BEFORE: Board Panel: HUNSUCKER and GEMOETS, Appellate Immigration Judges; WHITE, Temporary Appellate Immigration Judge.

HUNSUCKER, Appellate Immigration Judge:

The Department of Homeland Security ("DHS") appeals the Immigration Judge's August 26, 2025, decision granting the respondent deferral of removal under the regulations implementing the Convention Against Torture ("CAT").[2] The respondent, a native and citizen of Guinea, appeals the

[1] Pursuant to Order No. 7119-2026, dated September 1, 2026, the Attorney General designated the Board's decision in *Matter of S-K-E-* (BIA July 28, 2026), as precedent in all proceedings involving the same issue or issues. *See* 8 C.F.R. § 1003.1(g)(3) (2026). Editorial changes have been made consistent with the designation of the case as a precedent.

[2] The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into

Immigration Judge's August 26, 2025, decision terminating his asylum status and denying his applications for asylum and withholding of removal under sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A) (2024), and adjustment of status and a waiver of inadmissibility under sections 209(b) and 209(c) of the INA, 8 U.S.C. § 1159(b), (c) (2024). On April 10, 2026, the respondent filed a motion for summary dismissal. DHS' appeal will be sustained. The respondent's appeal will be dismissed, and his motion for summary dismissal will be denied.

The respondent claims harm and a fear of future harm in Guinea from members of society and government officials on account of his sexual orientation and mental illnesses. On January 2, 2025, DHS commenced removal proceedings against the respondent, charging him as having been convicted of two or more crimes involving moral turpitude any time after admission under section 237(a)(2)(A)(ii) of the INA, 8 U.S.C. § 1227(a)(2)(A)(ii) (2024). The Immigration Judge found the respondent credible in some aspects but not with regards to his criminal sexual conduct conviction. The Immigration Judge found that the respondent's conviction for criminal sexual conduct in the fourth degree in violation of section 609.345, subdivision 1(d), of the Minnesota Statutes was a conviction for a particularly serious crime. Based on this determination, the Immigration Judge found that the respondent's asylum status was terminated and he was therefore ineligible to adjust status under section 209(b) of the INA, 8 U.S.C. § 1159(b). As a matter of discretion, the Immigration Judge concluded the respondent did not merit a waiver under section 209(c) of the INA, 8 U.S.C. § 1159(c). Based on his conviction of a particularly serious crime, the Immigration Judge also found the respondent ineligible for asylum and withholding of removal. Though the Immigration Judge found that the respondent did not establish it was more likely than not that he would be tortured in Guinea due to his mental health, the Immigration Judge did determine that he established he would more likely than not be tortured due to his sexual orientation.

We first address the respondent's motion for summary dismissal on the grounds that DHS improperly served its Notice of Appeal from a Decision of an Immigration Judge (Form EOIR-26) on an unrepresented respondent through the Executive Office for Immigration Review's electronic Courts & Appeals System (ECAS). In certain circumstances, the Board may

force for United States Nov. 20, 1994). 8 C.F.R. §§ 1208.16(c), 1208.17 (2026); 8 C.F.R. § 1208.18(a) (2020).

summarily dismiss an appeal. 8 C.F.R. § 1003.1(d)(2)(i) (2026) (outlining such circumstances). Assuming arguendo that DHS should have served the respondent by mail, the respondent has not established that he was prejudiced by this error. *See Matter of R-C-R-*, 28 I&N Dec. 74, 77 (BIA 2020) ("To establish that his due process rights were violated, the respondent must prove that there was a deficiency or violation and that he was prejudiced by it."). The respondent was put on notice of DHS' appeal when the Board issued its briefing schedule indicating that both parties had filed appeals. The respondent could have requested a copy of DHS' notice of appeal or explained in his own appellate brief that he had not received a copy of DHS' filing. The respondent did not do so. Instead, the respondent waited for the briefing period to elapse before filing the present motion for summary dismissal. Since the respondent had the opportunity to both obtain and respond to DHS' notice of appeal, he has not established prejudice from any apparent service error.

In his notice of appeal, the respondent challenges the Immigration Judge's determinations related to his criminal conviction, the termination of his asylum status, and his ineligibility for adjustment of status, a waiver of inadmissibility, asylum, and withholding. For the reasons stated therein, we adopt and affirm the Immigration Judge's decision on these issues. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Bejet-Viali Al-Jojo v. Gonzales*, 424 F.3d 823, 827 (8th Cir. 2005) (favorably citing the Board's use of *Matter of Burbano*). On our review of the record, there is no clear error of fact or error of law in the Immigration Judge's determinations that the respondent's conviction for a particularly serious crime warrants the termination of his asylee status and precludes him from establishing eligibility for asylum and withholding of removal under the INA. Further, the respondent's criminal conviction demonstrates that he does not warrant a waiver of inadmissibility in the exercise of discretion.

On appeal, the respondent also argues that the Immigration Judge erred in her treatment of certain evidence in his proceedings. Specifically, the respondent argues that the Immigration Judge erred in finding Exhibit 31, Exhibit 33, Tab B, and Exhibit 34 untimely and therefore due no weight, and finding that his expert, Dr. Fitzgerald, was not an expert in human rights conditions, LGBTQ issues, and health systems in Guinea.

An Immigration Judge has broad discretion regarding whether to admit evidence and is also given significant deference regarding the evidentiary weight to accord any particular evidence, including testimony. *See Matter of D-R-*, 25 I&N Dec. 445, 458 (BIA 2011), *remanded on other grounds sub nom., Radojkovic v. Holder*, 599 F. App'x 646 (9th Cir. 2015). Further, an

Immigration Judge may set reasonable time limits for the filing of applications and related documents, and an application or document that is not filed within the time established by the Immigration Judge may be deemed waived. 8 C.F.R. § 1003.31(h) (2026); *see also Matter of Interiano-Rosa*, 25 I&N Dec. 264, 265 (BIA 2010).

As the Immigration Judge explained in her decision, the record was left open after the respondent's merits hearings for the limited purpose of filing additional criminal records. Exhibits 31, Exhibit 33, Tab B, and Exhibit 34 were not updated criminal records, but rather, additional country reports, call logs between the respondent and others, witness affidavits, and employment records. The Immigration Judge permissibly declined to consider such filings.

Moreover, even if the Immigration Judge had erred in not accepting such filings, the respondent has not established that he was prejudiced by such an error. *See Matter of R-C-R-*, 28 I&N Dec. at 77 (explaining that to establish a due process violation, a respondent "must prove that there was a deficiency or violation and that he was prejudiced by it"); *see also Matter of D-*, 20 I&N Dec. 827, 831 (BIA 1994) (stating that a respondent has been denied a fair hearing "only if he has been prejudiced by some deficiency so as to deprive him of due process"). The respondent has not indicated on appeal how these specific pieces of evidence would materially affect the outcome of his case, even as it relates to his eligibility for adjustment of status or a waiver of inadmissibility. The record already contained multiple country conditions reports that the Immigration Judge cited to extensively in her decision. The record also contained evidence related to the respondent's familial connections and employment history which the Immigration Judge considered in her discretionary analysis.

Assuming arguendo that the Immigration Judge erred in not considering Dr. Fitzgerald as an expert in human rights conditions, LGBTQ issues, and health systems in Guinea, the respondent has not demonstrated prejudice. *See Matter of R-C-R-*, 28 I&N Dec. at 77. Nothing requires an Immigration Judge to give special consideration to the testimony or declaration of an expert witness. *See Matter of M-A-M-Z-*, 28 I&N Dec. 173, 177 (BIA 2020) ("Expert witness testimony is evidence and so is treated the same as all evidence in immigration proceedings, where the Immigration Judge is the trier of fact and weighs the evidence in accordance with that role."); *Matter of J-G-T-*, 28 I&N Dec. 97, 106 (BIA 2020) (holding that an Immigration Judge should weigh the expert testimony against contradictory evidence in the record). "An Immigration Judge should only find an expert's opinion to be persuasive if there is a reliable factual or evidentiary basis for [the expert's] conclusions." *Matter of J-G-T-*, 28 I&N Dec. at 103. As discussed in her decision, the Immigration Judge referenced Dr. Fitzgerald's evidence multiple times in making her determination about the respondent's eligibility for protection under the CAT, which was also considered in her assessment of the respondent's eligibility for other forms of relief. Based on the record before us, the respondent has not established that he was prejudiced by not having Dr. Fitzgerald qualified as an expert on additional topics.

DHS argues that the Immigration Judge erred in granting deferral of removal to the respondent, as he provided insufficient corroboration for key aspects of his case and did not establish that each step in his hypothetical chain of events was more likely than not to happen. In support of its arguments, DHS points to credibility concerns about the respondent's testimony about his past relationships and the Immigration Judge's reliance on testimony from the respondent's expert witness.

The Immigration Judge's credibility finding is clearly erroneous. The respondent's claim regarding his sexual orientation is not credible. *See Matter of Dass*, 20 I&N Dec. 120, 124 (BIA 1989) (explaining that an applicant must present testimony that is "believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis for his alleged fear"). The respondent testified that he preferred men to women. He further testified that he has held this interest from a young age. However, the respondent claimed that his only past relationship with a man was with his cellmate whom he called "Face." The respondent failed to provide any further details about this past relationship, other than it was sexual in nature. The respondent's other past relationships were all with women. Further, the respondent was arrested for criminal sexual conduct with a woman. Moreover, the respondent's conflicting description of his sexual orientation as "homosexual," "bisexual," and "gay," undercuts his claimed orientation.

The respondent also did not provide sufficient corroborating evidence regarding his alleged sexual orientation or assault as a child. *See Garland v. Ming Dai*, 593 U.S. 357, 371 (2021) (explaining that even if an agency finds a respondent credible, it "need not find his evidence persuasive or sufficient to meet the burden of proof"); *Matter of L-A-C-*, 26 I&N Dec. 516, 518 (BIA 2015) (noting the respondent's burden to corroborate the material elements of his claim where the evidence is reasonably obtainable, regardless of credibility). Despite his testimony and declaration that he engaged in play with other boys in high school and college, the respondent has not provided any oral, written, or photographic evidence to corroborate his claimed sexual orientation. There are no letters or affidavits from any of the respondent's past claimed friends or his fraternity brothers. The respondent's affidavit indicates he went to clubs and bars to find people who were open about their sexuality, but there is no further detail about these experiences in his testimony, nor is there any corroborating evidence of the respondent's time in these locations. The respondent's father, who testified in support of his case, was unaware of the respondent's claimed sexual orientation. He was also not a witness to the respondent's claimed harm in Guinea. The respondent's father is only aware of what happened in Guinea based on what he was told by the respondent's aunt.

The respondent submitted psychological reports as evidence of the harm he suffered in Guinea and his sexual orientation. However, the findings and conclusions in these reports are based on the respondent's testimony to medical and prison officials, as opposed to independent observations. The only independently verified interaction the respondent has had is with a woman as it relates to his criminal conviction. Given the respondent's long residence in the United States and his claimed preference for men, it is not reasonable that the respondent has no independent corroborating evidence of his claimed sexual orientation.

Because the respondent has not established his sexual orientation, the Immigration Judge's findings regarding his eligibility for protection under the CAT on this basis must be reversed. *See Fesehaye v. Holder*, 607 F.3d 523, 528 (8th Cir. 2010) (expressing that a separate analysis for CAT is not required where the claim for protection is "based on the same testimony as that underlying the [alien's] claims for asylum and withholding of removal") (citation omitted)). Information in the country reports or testimonial evidence from the respondent's expert witnesses on the treatment of members of the LGBTQ community does not establish that the Guinean Government will more likely than not torture the respondent where he has not established his membership in such community.

**ORDER:** DHS' appeal is sustained.

**FURTHER ORDER:** The respondent's appeal is dismissed.

**FURTHER ORDER:** The respondent's motion for summary dismissal is denied.

**FURTHER ORDER:** The Immigration Judge's decision granting the respondent's request for deferral of removal to Guinea under the Convention Against Torture is vacated, and the respondent is ordered removed to Guinea.

**NOTICE:** If a respondent is subject to a final order of removal and willfully fails or refuses to depart from the United States pursuant to the order, to make timely application in good faith for travel or other documents necessary to depart the United States, or to present himself or herself at the time and place required for removal by the DHS, or conspires to or takes any action designed to prevent or hamper the respondent's departure pursuant to the order of removal, the respondent shall be subject to a civil monetary penalty of up to $998 for each day the respondent is in violation. *See* INA § 274D, 8 U.S.C. § 1324d (2024); 8 C.F.R. § 280.53(b)(14) (2026). Further, any respondent that has been denied admission to, removed from, or has departed the United States while an order of exclusion, deportation, or removal is outstanding and thereafter enters, attempts to enter, or is at any time found in the United States shall be fined or imprisoned not more than 2 years, or both. *See* INA § 276(a), 8 U.S.C. § 1326(a) (2024).