

Matter of V-S-A-, Respondent

Decided September 10, 2026

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

- (1) When inter-proceeding similarities are considered in a credibility determination, the redaction of personally identifying information from inter-proceeding declarations provides sufficient protection of the declarants' privacy and comports with the confidentiality regulation at 8 C.F.R. § 1208.6(a)–(c) (2026).
- (2) The procedural safeguards set forth in *Matter of R-K-K-*, 26 I&N Dec. 658 (BIA 2015), do not require declarants to be made available for cross-examination before the Immigration Judge can consider the declarations for inter-proceeding comparison. *Matter of R-K-K-*, 26 I&N Dec. 658 (BIA 2015), clarified.

FOR THE RESPONDENT: Ashwani K. Bhakhri, Esquire, Burlingame, California

FOR THE DEPARTMENT OF HOMELAND SECURITY: Matthew S. Gabe, Deputy Chief Counsel

BEFORE: Board Panel: GORMAN, Deputy Chief Appellate Immigration Judge; GOODWIN and VOLKERT, Appellate Immigration Judges.

GOODWIN, Appellate Immigration Judge:

The Department of Homeland Security (“DHS”) appeals from the Immigration Judge’s October 8, 2025, decision granting the respondent’s application for asylum under section 208 of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1158 (2024). The respondent, a native and citizen of India, opposes the appeal. The appeal will be sustained, and the record will be remanded.

On October 2, 2025, 6 days prior to the respondent’s merits hearing held on October 8, 2025, the respondent filed a declaration in support of his political-opinion-based asylum claim. The respondent asserts that members of an opposing political party in India attacked and injured him on two occasions because he supported the Mann Party.

On October 6, 2025, DHS filed copies of similarly worded declarations from 12 separate political opinion-based Indian asylum applications, which DHS argued bore boilerplate language hallmarks. DHS argued that all 12 declarations contained substantial factual similarities to the respondent’s

declaration and that the inter-proceeding similarities established the respondent's claim was fabricated.

To protect the privacy of the other 12 asylum applicants, DHS redacted personally identifying information from each of the 12 submitted declarations. Despite these protective measures, the Immigration Judge was concerned with due process issues attached to the declarations and assigned little to no weight to DHS' submission. The Immigration Judge explained that she did not know the facts or circumstances in which the 12 documents were created and was concerned particularly with the privacy protections of the 12 other asylum applicants from whose cases the declarations were taken. The Immigration Judge also noted that the respondent in the present case had no opportunity to cross-examine these 12 individuals. The Immigration Judge ultimately found the respondent credible and granted his application for asylum.

On appeal, DHS argues the Immigration Judge's positive credibility finding is clearly erroneous. DHS maintains that the respondent's declaration bears striking inter-proceeding similarities to those of the 12 other individuals and argues that the Immigration Judge clearly erred in disregarding and assigning reduced or no weight to the 12 redacted declarations. DHS further challenges the Immigration Judge's bases for giving the evidence reduced weight, namely due process and privacy concerns, given the redaction of personally identifying information. We agree and will sustain the appeal.

I. INTER-PROCEEDING SIMILARITIES

"In immigration proceedings, the sole test for admission of evidence is whether the evidence is probative and its admission is fundamentally fair." *Matter of Mariscal-Hernandez*, 28 I&N Dec. 666, 668 (BIA 2022) (citation modified); accord *Sanchez v. Holder*, 704 F.3d 1107, 1109 (9th Cir. 2012) (per curiam). In *Matter of R-K-K-*, 26 I&N Dec. 658, 661–62 (BIA 2015), we set forth a three-part framework for the proper procedural safeguards when reviewing inter-proceeding similarities. See *Singh v. Bondi*, 130 F.4th 1142, 1153–54 (9th Cir. 2025) (explaining that the procedural safeguards in *Matter of R-K-K-* properly "ensure that the testimony of applicants who merely happen to have been in similar situations is not automatically discounted"). The three-part framework consists of meaningful notice of the similarities, reasonable opportunity to explain the similarities, and consideration of the totality of the circumstances in making a credibility determination. *Matter of R-K-K-*, 26 I&N Dec. at 661–62.

In *Matter of R-K-K-*, we also commented on the application of the confidentiality requirements in inter-proceeding similarity cases. *Id.* at 661 n.3. The declaration at issue in *Matter of R-K-K-* was not redacted but comported with the confidentiality requirement set forth in 8 C.F.R. § 1208.6 (2015) because the asylum applicant's brother in that case waived his confidentiality protections.¹ *Id.* at 663 n.4. Although there are no confidentiality waivers in the respondent's case, the declarations submitted by DHS were redacted to ensure the 12 individuals' privacy, which also obscured any personal information that would have otherwise potentially linked the 12 individuals to their declarations or asylum applications. When inter-proceeding similarities are considered in a credibility determination, the redaction of personally identifying information from the inter-proceeding declarations provides sufficient protection of the declarants' privacy and comports with the confidentiality regulation at 8 C.F.R. § 1208.6(a)–(c).

This approach is consistent with the precedent of the United States Court of Appeals for the Ninth Circuit, in whose jurisdiction this case arises, as well as that of other federal courts. *See Singh v. Bondi*, 130 F.4th at 1149–53 (affirming an adverse credibility finding where redacted declarations were submitted to show that the alien's application had striking similarities to other asylum applicants' applications); *Tuffly v. U.S. Dep't of Homeland Sec.*, 870 F.3d 1086, 1091, 1095–98 (9th Cir. 2017) (upholding DHS' decision to redact the personal identifying information of released detainees to protect their privacy); *see also Mei Chai Ye v. U.S. Dep't of Just.*, 489 F.3d 517, 520–21 (2d Cir. 2007) (finding that an Immigration Judge complied with procedural protections in the consideration of inter-proceeding similarities where the Immigration Judge asked DHS to prepare a redacted version of an unrelated asylum application due to "privacy concerns . . . in the sharing of affidavits across unrelated cases").

Additionally, contrary to the Immigration Judge's findings, the procedural safeguards set forth in *Matter of R-K-K-* do not require the

¹ The confidentiality regulation, 8 C.F.R. § 1208.6(a)–(c) (2026), prohibits the disclosure of information contained in or pertaining to any asylum application to the public or any third party. *See also Owino v. Holder*, 771 F.3d 527, 534–35 (9th Cir. 2014) (explaining that a 2001 memorandum issued by the former Immigration and Naturalization Service provided that confidentiality "is breached when information contained therein or pertaining thereto is disclosed to a third party, and the disclosure is of a nature that allows the third party to link the identity of the applicant to . . . [the] facts or allegations pertaining to the individual asylum claim" or that "give rise to a reasonable inference that the applicant has applied for asylum" (citation omitted)). The regulation was created to ensure that third parties are unable to identify an applicant to prevent "subject[ing] an applicant to retaliatory measures in [the applicant's] country of origin." *See id.* at 533.

12 other declarants to be made available for cross-examination before the Immigration Judge can consider the declarations for inter-proceeding comparison. See *Matter of R-K-K-*, 26 I&N Dec. at 661–62. As the declarations are submitted for the limited purpose of establishing similarities in the words and phrases therein, cross-examination of the declarants is not required. See *United States v. Johnson*, 875 F.3d 1265, 1278 (9th Cir. 2017) (explaining that out-of-court statements are admissible where they are submitted “for purposes other than establishing the truth of the matter asserted” and that the submission of such statements does not violate the Sixth Amendment’s Confrontation Clause (citation omitted)). In such cases, the redacted, similarly worded inter-proceeding evidence that is suggestive of boilerplate or fictitious submissions is not being offered for the truth of the statements made within but solely for the comparative purpose of showing specific similarities in words and phrases.

Accordingly, we conclude that no due process or privacy violations occurred concerning DHS’ submission of the redacted declarations, and the Immigration Judge erred in finding otherwise. See *Shin v. Mukasey*, 547 F.3d 1019, 1024 (9th Cir. 2008) (“‘In order to successfully attack . . . the conclusions and orders made upon such [removal] hearings it must be shown that the proceedings were manifestly unfair’ and that the actions of the IJ were such as to prevent a fair investigation.” (quoting *Low Wah Suey v. Backus*, 225 U.S. 460, 468 (1912) (alteration original))).

As set forth in *Matter of R-K-K-*, when analyzing inter-proceeding similarities, Immigration Judges should clearly identify on the record the documentary similarities. 26 I&N Dec. at 661. In addition to ensuring a complete record, the three-part review framework helps the Immigration Judge discover the “extent and nature of [the inter-proceeding] similarities in the case,” which also assists with our appellate review. *Id.* In engaging in this concentrated review, Immigration Judges should examine whether there are “‘word for word’ repetition[s],” “repeated similarities in narrative structure,” and “unique, detailed factual similarities.” *Singh v. Bondi*, 130 F.4th at 1150.

Here, in comparing the respondent’s declaration to the 12 declarations filed by DHS, the Immigration Judge found the similarities insufficient to undermine the respondent’s credibility without detailing whether there were “identical phrases or words, the same grammatical mistakes and punctuation, the use of distinctive language, or the unnecessary addition of extraneous detail.” *Singh v. Garland*, 118 F.4th 1150, 1161 (9th Cir. 2024) (citing *Matter of R-K-K-*, 26 I&N Dec. at 661–62). In doing so, the Immigration Judge focused on such broad factual differences as the following: 1) the

respondent belonged to the Mann Party while some of the declarants belonged to the Indian National Lok Dal Party; 2) the respondent was motivated by the Mann Party's anti-drug message whereas some of the declarants did not discuss that issue and were instead motivated by caste discrimination or the creation of a separate Sikh state, Khalistan; and 3) the village Sarpanch supported the respondent while local authorities did not support other declarants. Although acknowledging that *Matter of R-K-K*, *Singh v. Garland*, and *Singh v. Bondi* required her to consider identical words and phrases, distinctive language, and unnecessary addition of extraneous detail, the Immigration Judge clearly erred by focusing instead on the broad facts of the cases. See 8 C.F.R. § 1003.1(d)(3)(i) (2026).

Accordingly, on remand, the Immigration Judge should assign appropriate weight to the admissible and properly redacted declarations and reassess the respondent's credibility under the proper *Matter of R-K-K*-framework by clearly identifying the similarities in the affidavits prior to considering the respondent's explanations or the reliability of the evidence in the totality of the circumstances. *Matter of R-K-K*, 26 I&N Dec. at 661–62.

II. PAST PERSECUTION

With respect to the respondent's substantive asylum claim, the Immigration Judge found that the respondent suffered two incidents of harm. In the first incident, the Immigration Judge found that the respondent was threatened, pushed from a motorcycle, and beaten with hockey sticks, after which he sought medical treatment. The Immigration Judge found that in the second incident the respondent was pushed, beaten, and kicked, resulting in treatment for bruises and swelling. Citing *Singh v. Bondi*, 161 F.4th 560 (9th Cir. 2025), DHS argues that the Immigration Judge erred as a matter of law in concluding that the respondent's harm rose to the level of persecution because the respondent suffered no significant injuries.

We agree with DHS that, even if the respondent is viewed as credible, the harm he suffered does not rise to the level of persecution under the applicable standard. See *Sharma v. Garland*, 9 F.4th 1052, 1063–64 (9th Cir. 2021) (holding that “the harm perpetrated against [the applicant], while disgraceful, [did] not compel a finding of past persecution” where he was detained for less than a day, experienced verbal abuse and some physical abuse during detention, and did not suffer serious bodily harm). The respondent alleges he experienced two short assaults several months apart requiring only antibiotics and anti-inflammatory medication for minor bruising. Although medical treatment is not necessary to establish harm amounting to

persecution, the fact that the respondent sought medical treatment and only required medication signifies that the harm and injuries were not sufficiently serious. *Cf. Lopez v. Ashcroft*, 366 F.3d 799, 803 (9th Cir. 2004) (holding that an applicant established persecution, despite his failure to seek medical treatment, where he was tied up by guerillas, left to die in a burning building, and experienced additional death threats). Further, while the respondent asserts he was threatened by the Bharatiya Janata Party members who assaulted him, the incidents occurred several months apart and he did not receive further threats between his second assault and the day he left India several months later. *See Matter of E-M-F-S-*, 29 I&N Dec. 379, 385 (BIA 2026) (holding that “the applicant must establish that the purported persecutor actually possessed the ability to imminently follow through on the threat”). Consequently, we reverse the Immigration Judge’s determination that the respondent established harm rising to the level of persecution. *See* 8 C.F.R. § 1003.1(d)(3)(ii) (2026).

Since the Immigration Judge previously found that the respondent benefited from the presumption of a well-founded fear of future persecution, we additionally remand for the Immigration Judge to determine, if appropriate after assessing credibility anew, whether the respondent meets his burden to establish that he faces a well-founded fear of future persecution. *See* 8 C.F.R. § 1208.13(b)(2) (2026).

In granting asylum, the Immigration Judge did not reach the respondent’s application for withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. § 1231(b)(3) (2024), and protection under the Convention Against Torture.² We will therefore also remand proceedings for the Immigration Judge to consider these forms of relief and protection, if appropriate, in the first instance.

In sum, we will remand the record to the Immigration Judge for consideration of the inter-proceeding declaration evidence, reevaluation of credibility, and reconsideration of the respondent’s applications for relief and protection. We express no opinion on the ultimate outcome of these proceedings.

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 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).

ORDER: DHS' appeal is sustained, and the Immigration Judge's grant of asylum is vacated.

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.