

Matter of C-M-H-H-, Respondent

Decided October 2, 2026

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

- (1) The Board does not retain jurisdiction after remanding the record to the Immigration Court. *Matter of Patel*, 16 I&N Dec. 600, 601 (BIA 1978), clarified.
- (2) The Immigration Judge's issuance of a new decision on remand without holding another hearing did not violate the Board's remand order nor deprive the respondent of due process.

FOR THE RESPONDENT: Laura S. Rodriguez, Esquire, Newark, New Jersey

BEFORE: Board Panel: GORMAN, Deputy Chief Appellate Immigration Judge; GALLOW, Appellate Immigration Judge; and PICOS, Temporary Appellate Immigration Judge.

GORMAN, Deputy Chief Appellate Immigration Judge:

The respondent appeals from the Immigration Judge's October 25, 2021, decision denying his application for withholding of removal under section 241(b)(3) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1231(b)(3) (2018), and protection under the regulations implementing the Convention Against Torture ("CAT").¹ The appeal will be dismissed. The respondent's request for oral argument is denied. *See* 8 C.F.R. § 1003.1(e)(7) (2026).

I. FACTUAL AND PROCEDURAL HISTORY

On June 30, 2020, the Department of Homeland Security filed a notice to appear charging the respondent, who is a native and citizen of El Salvador, with removability under section 237(a)(1)(B) of the INA, 8 U.S.C. § 1227(a)(1)(B) (2018), as an alien who is present in the United States in violation of law. Before the Immigration Judge, the respondent conceded removability and sought asylum, withholding of removal, and protection under the CAT. The Immigration Judge denied the respondent's applications

¹ 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).

and ordered him removed. The respondent appealed. On September 24, 2021, this Board held that the respondent had waived his asylum claim and remanded the case for further fact-finding and legal analysis regarding his claims for withholding of removal and CAT protection.

On remand, the Immigration Judge issued a new decision without holding additional hearings and again denied the respondent's applications for withholding of removal and protection under the CAT.

II. ANALYSIS

A. Jurisdiction and Scope of Remand

The respondent argues that the Immigration Judge erred by failing to hold a new hearing or reopen the record for additional testimony and evidence following the Board's remand. The Board's remand order did not explicitly instruct the Immigration Judge to conduct further hearings or reopen the record. *See generally Matter of Patel*, 16 I&N Dec. 600, 601 (BIA 1978) (holding that a remand from the Board to an Immigration Judge is effective for all matters deemed appropriate in the exercise of the Immigration Judge's administrative discretion "unless the Board qualifies or limits the remand for a specific purpose"). Instead, our order instructed the Immigration Judge to consider some previously untimely-filed country conditions evidence and "issue a new decision addressing the respondent's claims for withholding of removal under the Act and CAT in light of the evidence of record as set forth herein."

We take this occasion to clarify our decision in *Matter of Patel* to the extent that it may be interpreted to imply that the Board retains jurisdiction despite remanding a case to the Immigration Judge. The regulations provide that appellate jurisdiction lies with the Board during the pendency of an appeal. *See* 8 C.F.R. §§ 1003.1(b) (2020), 1003.3 (2026). The Board does not retain jurisdiction after remanding the record to the Immigration Court. When the Board remands the record to the Immigration Judge for further proceedings, the Immigration Judge reacquires jurisdiction over the case pursuant to the authority conferred by the regulations. *See* 8 C.F.R. §§ 1003.10, 1240.1 (2026); *see also Matter of L-S-C-R-*, 29 I&N Dec. 451, 452–53 (BIA 2026). Insofar as *Matter of Patel* could be read to suggest otherwise, we now clarify that a remand from the Board returns jurisdiction to the Immigration Judge to conduct proceedings as directed by the Board's remand order and pursuant to the regulations. Thus, the Board's authority

after remand is not one of continuing plenary jurisdiction after the appeal has been adjudicated.²

Matter of Patel correctly held that the Board may qualify or limit a remand for a specific purpose. See generally 8 C.F.R. §§ 1003.1(d)(1), (6), (7), 1003.47(h) (2026); see also *Matter of M-D-*, 24 I&N Dec. 138, 141–42 (BIA 2007); *Matter of Alcantara-Perez*, 23 I&N Dec. 882 (BIA 2006). For example, the Board recently addressed the scope of an Immigration Judge’s jurisdiction following a remand to the Immigration Judge to complete or update the background and security checks. *Matter of L-S-C-R-*, 29 I&N Dec. at 451. Where the Board remands for a discrete or limited purpose, the Immigration Judge reacquires jurisdiction to act, but the Immigration Judge must act only within the bounds of that remand order and may not revisit matters already resolved by the Board. See, e.g., *Matter of L-S-C-R-*, 29 I&N Dec. at 453 (holding that a background check remand under 8 C.F.R. § 1003.47(h) “is limited to the Immigration Judge’s consideration of the results of the background and security checks and the issuance of an order on the relief or protection that was the basis for the remand”); *Matter of M-D-*, 24 I&N Dec. at 141 (holding that “the Immigration Judge may not reconsider the decision of the Board”).³ Conversely, where the Board does not qualify or limit the remand, the Immigration Judge may address any matters he or she deems appropriate under the INA and regulations. *Matter of Patel*, 16 I&N Dec. at 601.

Our remand order in this case did not explicitly instruct the Immigration Judge to conduct further hearings or reopen the record for new evidence. Nor did our order limit the scope of the remand. Thus, when the Immigration Judge reacquired jurisdiction over the respondent’s proceedings on remand, she had broad authority over the manner in which to conduct the proceedings, subject to the terms of the remand order and pursuant to the governing regulations. See 8 C.F.R. §§ 1003.10(b), 1240.1(a)(1)(iv); see also *Matter*

² The regulations also contemplate the limited return of the record to the Immigration Court for procedural or ministerial purposes (such as defective transcripts, missing records, missing decisions, etc.), after which the matter may be returned to the Board through certification. See generally 8 C.F.R. §§ 1003.1(c), 1003.7, 1240.1(a)(2) (2026). That is a different scenario outside the scope of this decision.

³ Although an Immigration Judge may not reconsider a prior decision of the Board, once jurisdiction has returned to the Immigration Court, the Immigration Judge may adjudicate a properly filed motion to reopen, provided that the moving party satisfies the applicable regulatory requirements, including the submission of material evidence that was not previously available and could not have been discovered or presented at the former hearing. See 8 C.F.R. § 1003.23(b)(3) (2026); *Matter of L-S-C-R-*, 29 I&N Dec. at 453; *Matter of M-D-*, 24 I&N Dec. at 141–42.

of Herrera Del Orden, 25 I&N Dec. 589, 591 (BIA 2011) (holding that in “exercising the powers and duties delegated by the Attorney General of the United States, Immigration Judges have broad authority over the manner in which they conduct proceedings, not only in cases where removability is at issue, but also in those where the alien seeks only relief from removal”).

The Immigration Judge’s issuance of a new decision on remand without holding another hearing did not violate the Board’s remand order nor deprive the respondent of due process. The respondent had the opportunity to fully present his claims for consideration before the Immigration Judge and received a full and fair hearing prior to the Board’s remand. *See Amos v. Att’y Gen. of U.S.*, 157 F.4th 313, 323–24 (3d Cir. 2025) (holding that, to establish a due process claim, the alien must show substantial prejudice as a result of not being able to reasonably present his or her case). As the respondent had already been given a full and fair opportunity to present his case, the Immigration Judge’s reassessment of his application for withholding of removal and protection under the CAT did not require the Immigration Judge to reopen the record or provide the respondent an additional opportunity to present evidence on remand. *See generally* 8 C.F.R. § 1003.10(b) (“[I]mmigration judges shall exercise their independent judgment and discretion and may take any action consistent with their authorities under the Act and regulations that is necessary or appropriate for the disposition or alternative resolution of [their] cases.”). Thus, the Immigration Judge did not exceed her broad authority by reevaluating the respondent’s applications under controlling law based on the existing record. *See generally* 8 C.F.R. § 1240.1(a)(1)(iv) (providing that, in addition to the actions explicitly enumerated in the pertinent regulations, Immigration Judges are authorized to “take any other action consistent with applicable law and regulations as may be appropriate”).

Although the respondent asserts that he would have presented additional supporting evidence and that the existing record was limited because he “obtained new counsel shortly before his merits hearing,” he has not established a basis for reopening the proceedings. The respondent has not alleged a material change in country conditions, established ineffective assistance of counsel, or identified material evidence that was previously unavailable and could not have been discovered or presented at the former hearing. *See* 8 C.F.R. §§ 1003.2(c)(4) (2026), 1003.23(b)(3); *Matter of Rajah*, 25 I&N Dec. 127, 138 (BIA 2009); *Matter of Coelho*, 20 I&N Dec. 464, 471 (BIA 1992). Therefore, we decline to remand the record to the Immigration Judge for further proceedings.

B. Relief from Removal

Before the Immigration Judge, the respondent sought withholding of removal and protection under the CAT. The respondent claims past persecution and a well-founded fear of future persecution on account of his political opinion and membership in a particular social group. The Immigration Judge denied withholding of removal and protection under the CAT after concluding that the respondent did not carry his burdens of proof. More specifically, the Immigration Judge concluded that, while credible, the respondent did not suffer harm rising to the level of past persecution, did not establish the necessary nexus to a protected ground, and did not establish that internal relocation was not reasonably available. On appeal, the respondent argues that the Immigration Judge erred in denying relief and protection from removal because the respondent established past persecution and that his life or freedom would be threatened in the future on account of a protected ground if he is removed to El Salvador.

Considering the respondent's arguments and the entirety of the record, we agree with the Immigration Judge's reasoning, and we adopt and affirm the Immigration Judge's decision. *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994) (recognizing that adoption or affirmance of a decision of an Immigration Judge, in whole or in part, "is simply a statement that the Board's conclusions upon review of the record coincide with those which the immigration judge articulated in his or her decision"). The Immigration Judge's findings of fact are not clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i) (2026). Moreover, the Immigration Judge's decision properly concluded that the respondent did not meet his burden of proof for the requested relief or protection from removal. 8 C.F.R. § 1003.1(d)(3)(ii) (2026).

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

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 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 (2024), 8 U.S.C. § 1324d; 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).