

Matter of M-R-I-, Respondent

Decided October 7, 2026

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

- (1) An alien who, under a grant of advance parole, returns to a country of claimed persecution has abandoned his or her application for asylum, withholding of removal, and protection under the Convention Against Torture, absent compelling reasons for the return.
- (2) The application of a mandatory bar to relief is not triggered by the argument of counsel but is governed by the evidentiary record.

FOR THE RESPONDENT: Bandita Sharma Dahal, Esquire, Falls Church, Virginia

BEFORE: Board Panel: GOODWIN and VOLKERT, Appellate Immigration Judges;
TERRIEN, Temporary Appellate Immigration Judge.

VOLKERT, Appellate Immigration Judge:

In a decision dated June 17, 2020, the Immigration Judge denied the respondent asylum, withholding of removal, and protection under the regulations implementing the Convention Against Torture (“CAT”).¹ 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) (2018). The respondent appeals from that decision, arguing that the Immigration Judge erred in finding that his return to his home country constituted an abandonment of his application for relief. The respondent has also appended additional evidence to his appellate pleadings, which we construe as a motion to remand. The Department of Homeland Security (“DHS”) has not responded to the appeal or motion. The appeal will be dismissed, and the motion to remand will be denied.

I. FACTUAL AND PROCEDURAL HISTORY

The respondent is a native and citizen of Nepal who applied for asylum and related relief and protection before the Immigration Judge. While his

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) (2026); 8 C.F.R. § 1208.18(a) (2020).

application for relief and protection was pending before the Immigration Judge, the respondent requested advance parole from DHS to return to Nepal. DHS granted the respondent's request, and the respondent returned to Nepal in 2016 for about 2 months. The respondent testified before the Immigration Judge that he did so because he missed his family and was concerned for his mother's health and his family's well-being after the 2015 earthquake. In 2018, the respondent requested and was granted advance parole for a second time to visit India, where he remained for about 2 months, meeting with his Nepalese family who had traveled there. All the while, the respondent continued to pursue relief and protection from removal before the Immigration Judge.

On June 17, 2020, the Immigration Judge denied asylum and withholding of removal. He found that the respondent abandoned his applications because he returned to Nepal under a grant of advance parole after filing his asylum application and did not establish compelling reasons for such return. The Immigration Judge explained that the last health incident and hospitalization for the respondent's mother occurred approximately 4 years before the respondent returned to Nepal and the earthquake occurred 1 year before the respondent's travels. He found that the significant gap in time between the alleged triggering events and the respondent's trip to Nepal undermined the claim that he had a compelling need to return to Nepal, as did the respondent's ability to meet with his Nepalese family in India.

II. ABANDONMENT OF HIS APPLICATION

We agree with the Immigration Judge's application of 8 C.F.R. § 1208.8(b) (2026). The regulation at 8 C.F.R. § 1208.8(b) provides that an applicant who leaves the United States pursuant to advance parole "and returns to the country of claimed persecution shall be presumed to have abandoned his or her application, unless the applicant is able to establish compelling reasons for such return." This regulation is consistent with the definition of a refugee, who, in relevant part, "is unable or unwilling to return to" his or her country of nationality. INA § 101(a)(42)(A), 8 U.S.C. § 1101(a)(42)(A) (2024).² The regulation is also consistent with the INA's textual concern that a refugee's claimed fear of persecution upon return be "well-founded." INA § 101(a)(42)(A), 8 U.S.C. § 1101(a)(42)(A); *see also De Santamaria v. U.S. Att'y. Gen.*, 525 F.3d 999, 1011 (11th Cir. 2008) ("An asylum applicant's voluntary return to his or her home country is a relevant consideration in determining whether the asylum applicant has a

² Aliens having no nationality must be unable or unwilling to return to the country in which they last habitually resided. INA § 101(a)(42)(A), 8 U.S.C. § 1101(a)(42)(A).

well-founded fear of future persecution.”); *Tolozá-Jiménez v. Gonzáles*, 457 F.3d 155, 161 (1st Cir. 2006) (noting that an alien’s two returns to Colombia after visiting the United States “strongly indicat[es] that she has no fear of persecution”).

The respondent’s sole argument on appeal regarding the determination that he abandoned his application pursuant to 8 C.F.R. § 1208.8(b) is that the Immigration Judge improperly considered DHS’ closing argument, which was allegedly not served on the respondent in a timely manner and was missing some signatures. According to the respondent, this improper service means that DHS waived the opportunity to argue the abandonment issue. The Immigration Judge correctly found the respondent’s argument unavailing, as DHS filed its closing argument in accordance with the Immigration Judge’s briefing schedule. While the closing argument was served on the respondent several days after the filing date, the respondent has not shown how he was prejudiced by this delay. *See Rusu v. INS*, 296 F.3d 316, 320 (4th Cir. 2002) (stating that a showing of prejudice is required to establish a due process violation). The respondent was able to object to DHS’ submission in writing. He also renewed that objection orally at a later master calendar hearing, and the Immigration Judge expressly considered that objection. The respondent thus had notice and opportunity to respond to the arguments. The Immigration Judge’s consideration of DHS’ closing argument was not fundamentally unfair and therefore not a due process violation.

More fundamentally, the respondent’s argument fails even if we accept that DHS waived the opportunity to submit a closing argument. The respondent bears the burden of proof for asylum, withholding of removal, and protection under CAT. *See* INA § 208(b)(1)(B)(i), 8 U.S.C. § 1158(b)(1)(B)(i) (“The burden of proof is on the applicant to establish that the applicant is a refugee.”); INA § 240(c)(4)(A), 8 U.S.C. § 1229a(c)(4)(A); 8 C.F.R. §§ 1208.16(b), (c)(2), 1240.8(d) (2026). “If the evidence indicates that one or more of the grounds for mandatory denial of [an] application for relief may apply, the alien shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.” 8 C.F.R. § 1240.8(d); *see also Matter of Negusie*, 28 I&N Dec. 120, 152–55 (A.G. 2020) (discussing 8 C.F.R. § 1240.8, its statutory background, and the parties’ respective burdens of proof).

The application of a mandatory bar to relief is not triggered by the argument of counsel but is governed by the evidentiary record. Arguments by counsel are not evidence. *See Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). It is undisputed that the respondent traveled to Nepal

under a grant of advance parole. It was thus incumbent on him to present compelling reasons for that travel. The Immigration Judge put the respondent on notice of this issue and asked both parties to provide briefing on it. Even if DHS' arguments were not in the record, the respondent would still have to explain why he voluntarily returned to the country where he allegedly fears persecution and torture.

The respondent did not adequately carry his burden of proof in this regard.³ As noted by the Immigration Judge, significant time had passed between the respondent's trip to Nepal and the events that motivated him to return, such as the earthquake and his mother's health issues. Moreover, the respondent was later able to meet his Nepalese family in neighboring India, thereby demonstrating there was an alternative option to traveling to Nepal—the country to which he claimed he was unable and unwilling to return.

The respondent's abandonment of his application includes his asylum, withholding of removal, and CAT claims. The regulation at 8 C.F.R. § 1208.1(a)(1) (2026) expressly states that "[u]nless otherwise provided . . . [the regulations in] subpart A shall apply to all applications for asylum under section 208 of the Act or for withholding of deportation or withholding of removal under section 241(b)(3) of the Act, or under the Convention Against Torture, whether before an asylum officer or an immigration judge." Because 8 C.F.R. § 1208.8 is set forth within that subpart A, the rule of abandonment applies to the respondent's application in its entirety.

The text of 8 C.F.R. § 1208.8(b) further supports this conclusion. The regulation refers to an applicant who has "abandoned his or her application." The term "abandon" means "[t]o give up absolutely; to forsake entirely; to renounce utterly; to relinquish all connection with or concern in; to desert." *Abandon*, Black's Law Dictionary (6th ed. 1990); *see also Abandonment*, Black's Law Dictionary (7th ed. 1999) ("The relinquishing of a right or interest with the intention of never again claiming it."). "Abandonment denotes renunciation or withdrawal, or a rejection or desertion of one's responsibilities, a walking away from a relationship." *Cadet v. Fla. Dep't of Corr.*, 853 F.3d 1216, 1234 (11th Cir. 2017). The regulation also refers to a singular "application," with no parsing of a particular type of relief or

³ We need not reach the Immigration Judge's other reasons for denying asylum and withholding of removal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").

protection. 8 C.F.R. § 1208.8(b). This language clearly indicates that aliens forsake their whole application when subject to 8 C.F.R. § 1208.8(b).

We recognize that the regulation mentions “the country of claimed persecution,” and that the reference to persecution, taken in isolation, might be read to refer only to asylum and statutory withholding of removal. However, the full reference is to the place of persecution, rather than the nature of harm feared. These “textual and contextual clues” all support concluding that the respondent abandoned a singular application including asylum, withholding of removal, and protection under CAT.⁴ *Niz-Chavez v. Garland*, 593 U.S. 155, 169 (2021).

Although the Immigration Judge found only withholding of removal under CAT abandoned and proceeded to consider the respondent’s eligibility for deferral of removal under CAT, this analysis was unnecessary. As discussed previously, 8 C.F.R. § 1208.1(a)(1) states that the other regulations in that subpart apply to “applications for asylum under section 208 of the Act or for withholding of deportation or withholding of removal under section 241(b)(3) of the Act, or under the Convention Against Torture.” The addition of a comma following the reference to withholding of removal under the INA “sets apart the subsequent clause.” *Int’l Primate Prot. League v. Adm’rs of Tulane Educ. Fund*, 500 U.S. 72, 80 (1991). That subsequent clause refers to CAT generally.

Moreover, even if we were to read 8 C.F.R. § 1208.1(a)(1) and § 1208.8(b) as referring only to withholding of removal under CAT, the respondent is not eligible to seek deferral of removal under CAT pursuant to the plain language of the separate regulation at 8 C.F.R. § 1208.17(a) (2026). CAT is not self-executing and is “effectuated through a statutory scheme that Congress has established, and which the Attorney General has implemented through regulations.” *Hui Zheng v. Holder*, 562 F.3d 647, 655–56 (4th Cir.

⁴ Our conclusion is not inconsistent with our decision in *Matter of L-F-R-*, 29 I&N Dec. 787 (BIA 2026). That decision addressed the annual asylum fee as required by the One Big Beautiful Bill Act (“OBBBA”), Pub. L. No. 119-21, tit. X, subtit. A, pt. 1, § 100009, 139 Stat. 72, 371–72 (2025) (codified at 8 U.S.C.A. § 1808). In particular, we addressed OBBBA’s fees required for aliens who file an “application for asylum under section 1158 of [title 8 of the United States Code].” 8 U.S.C.A. § 1802(a) (West 2026); *see also* 8 U.S.C.A. § 1808(a) (West 2026) (establishing the annual asylum fee for “an alien’s application for asylum”). That statutory language references an “application for asylum,” while the regulatory language at issue here speaks to an “application.” *Compare* 8 U.S.C.A. §§ 1802(a), 1808(a), *with* 8 C.F.R. § 1208.8(b). We also expressly noted our view that OBBBA’s use of the term application for asylum does not negate the comprehensive regulatory framework governing asylum and related relief and protection. *Matter of L-F-R-*, 29 I&N Dec. at 792 n.8.

2009). By regulation, deferral of removal is only available to those who, among other requirements, are entitled to CAT protection under 8 C.F.R. § 1208.16(c)(3) and are subject to mandatory denial of withholding of removal under 8 C.F.R. § 1208.16(d)(2) or (d)(3). 8 C.F.R. § 1208.17(a). The respondent does not fall within that class of aliens precisely because he abandoned his application. *See* 8 C.F.R. §§ 1208.1(a)(1), 1208.8(b). It would be anomalous to deny (whether on mandatory grounds or on the merits) an application that an applicant has previously abandoned. Thus, we conclude that an alien who, under a grant of advance parole, returns to a country of claimed persecution has abandoned his or her application for asylum, withholding of removal, and protection under CAT, absent compelling reasons for the return.

III. CONVENTION AGAINST TORTURE

Notwithstanding, even if the respondent could seek deferral of removal, we affirm the Immigration Judge's denial of that request. The respondent has presented minimal arguments on appeal regarding CAT. While these arguments might be sufficient in some jurisdictions to avoid waiving the issue entirely, they do not establish a clear error of fact or error of law in the Immigration Judge's denial of CAT protection.

The Immigration Judge noted numerous facts that cut against the respondent establishing CAT eligibility. For example, the Immigration Judge noted that the respondent's last encounter with the Maoists he fears was in 2010, and that he remained in Nepal for approximately 8 months unharmed before departing for the United States. The Immigration Judge also found insufficient evidence that the respondent's parents have been targeted recently. He found it speculative that the Maoists are still looking for the respondent or would be able to find him upon his return. As noted, the respondent has voluntarily returned to Nepal despite claiming a fear of torture.

Additionally, during the last 2010 incident, the respondent was able to flee inside a police station. The Maoists did not follow him into the station. The police officers then sheltered him for a day, took a police report, and escorted him safely to a relative's home upon his request.

The respondent, on appeal, does not mention these specific findings or otherwise explain why that analysis is in error. He simply states that he is in danger of being tortured or possibly killed by Maoists, the government of Nepal, or government agents, despite voluntarily returning to Nepal for a

visit. This minimal argument does not establish a clear probability of future torture within the meaning of CAT.

IV. MOTION TO REMAND

To the extent the respondent seeks remand to submit new evidence, the motion to remand will be denied. Motions to remand are adjudicated under the same standards as motions to reopen. *See Matter of Coelho*, 20 I&N Dec. 464, 471 (BIA 1992); *see also* 8 C.F.R. § 1003.1(d)(3)(iv) (2026) (stating that a party seeking additional factfinding or to introduce new evidence must file a motion to remand). A motion to reopen shall not be granted unless the “evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing.” 8 C.F.R. § 1003.2(c) (2026).

The respondent has submitted some evidence of updated country conditions.⁵ These conditions are not relevant to the determination that the respondent abandoned his application by traveling to Nepal several years ago. He also does not demonstrate a reasonable likelihood that he would be granted relief or protection based on this evidence. *See Mouns v. Garland*, 113 F.4th 399, 412 (4th Cir. 2024) (holding that the “reasonable likelihood” standard is the generally applicable reopening standard). Accordingly, the following orders will be entered.

ORDER: The appeal is dismissed.

FURTHER ORDER: The motion to remand is denied.

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, 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

⁵ The respondent also appended some evidence that is already in the record, as well as evidence relating to a visa petition relevant to another alien. This evidence is not a basis for remanding these proceedings.

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).