Matter of N-L-U-, Respondent

Decided by Board September 29, 2026 [1]

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

(1) The Immigration Judge erred in assessing the respondent's flight risk where he did not address evidentiary issues regarding the viability of the respondent's marriage, the lack of evidence of a sufficiently probable path to lawful status in the United States, evidence undermining the respondent's claim of a fixed address given his use of a variety of different addresses, and issues regarding the credibility and reliability of the evidence claiming the respondent's friend would financially sponsor him.

(2) A pending asylum application on its own is insufficient to mitigate flight risk.

FOR THE RESPONDENT: Heena Arora, Esquire, Jamaica, New York

FOR THE DEPARTMENT OF HOMELAND SECURITY: Donald E. Harris, Counsel

BEFORE: Board Panel: GORMAN, Deputy Chief Appellate Immigration Judge; VOLKERT, Appellate Immigration Judge; TERRIEN, Temporary Appellate Immigration Judge.

GORMAN, Deputy Chief Appellate Immigration Judge:

The Department of Homeland Security ("DHS") appeals from the Immigration Judge's April 17, 2026, order granting the respondent's request for custody redetermination and setting a bond in the amount of $20,000. The Immigration Judge issued a bond memorandum on May 20, 2026, setting forth the reasons for the bond order. The respondent, a native and citizen of India, has not responded to the appeal. The record will be remanded.

We agree with DHS that the Immigration Judge failed to properly assess the respondent's flight risk. *See Matter of E-Y-F-G-*, 29 I&N Dec. 103, 103 (BIA 2025) (reiterating that an alien in a custody determination under section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a) (2024), must establish that he "does not present a danger to persons or property, is

[1] Pursuant to Order No. 7270-2026, dated October 27, 2026, the Attorney General designated the Board's decision in *Matter of N-L-U-* (BIA Sep. 29, 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.

not a threat to the national security, and does not pose a risk of flight" (citation omitted)). As such, we conclude that a remand is warranted for further fact-finding to permit meaningful appellate review. *See Matter of S-H-*, 23 I&N Dec. 462, 464–65 (BIA 2002) (recognizing the heightened importance for Immigration Judges to provide legal analysis and make comprehensive findings of fact because the Board must defer to the factual determinations of an Immigration Judge absent clear error); *Matter of A-P-*, 22 I&N Dec. 468, 477 (BIA 1999) (stating that the Immigration Judge is "responsible for the substantive completeness of the decision").

The Immigration Judge found that the respondent married a United States citizen prior to the initiation of removal proceedings and that he is prima facie eligible for adjustment of status pursuant to a Petition for Alien Relative (Form I-130) from his spouse. However, there is no evidence in the record that the respondent's spouse has filed a Form I-130 petition on his behalf, nor has the spouse offered a letter of support for him. While the Immigration Judge surmised that a visa will be immediately available to the respondent if he obtains an approved Form I-130 petition, the Immigration Judge articulated no evidentiary basis for this conclusion, nor did the Immigration Judge provide specific predictive findings as to whether such a visa petition would be approved for the respondent in the first instance. *See Matter of Z-Z-O-*, 26 I&N Dec. 586, 590 (BIA 2015) ("[A]n Immigration Judge's predictive findings of what may or may not occur in the future are findings of fact, which are subject to a clearly erroneous standard of review."); *Matter of Andrade*, 19 I&N Dec. 488, 490 (BIA 1987) (stating that an individual with a greater likelihood of being granted relief has a stronger motivation to appear for a hearing than one who has less potential to obtain relief).

The record does not reflect that the Immigration Judge considered the concerns raised by DHS as to the viability of the respondent's marriage (i.e. testimonial and documentary evidence that the respondent had not spoken to his wife in 20 days, that he would reside with a family friend, rather than his wife, if released on bond, and that he did not know where his wife's children from a prior relationship are currently living, as well as record discrepancies between his and his wife's addresses) in assessing the respondent's prima facie eligibility for adjustment of status. While the Immigration Judge found, in the alternative, that the respondent has a strong incentive to appear at future hearings because he filed an application for asylum, a pending asylum application on its own is insufficient to mitigate flight risk. *See Matter of Z-N-L-*, 29 I&N Dec. 511, 512 (BIA 2026) ("[T]he fact that the respondent has an affirmative asylum application pending does not sufficiently mitigate his flight risk."). On remand, the Immigration Judge

should provide complete findings of fact and legal analysis as to whether the respondent has a sufficiently probable and timely path to lawful status in the United States. *See Matter of R-A-V-P-*, 27 I&N Dec. 803, 805–06 (BIA 2020) (recognizing that an Immigration Judge should consider an alien's circumstances in determining the likelihood that his application for relief will ultimately be approved).

The Immigration Judge generally concluded that the respondent has established significant family and employment ties in the United States. DHS contends on appeal that the respondent has reported a variety of different addresses in Indiana on his marriage certificate and tax returns, among other documents, which implies that the respondent does not have a fixed address despite living in the United States for 4 years. We agree with DHS that a remand is warranted for further consideration of this argument. *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) (listing a fixed address as a factor to consider in evaluating whether an alien merits release on bond).

The Immigration Judge further found that the respondent's close friend, who is a lawful permanent resident, is willing to financially sponsor the respondent, if necessary. However, the Immigration Judge's decision does not identify or analyze any evidence corroborating the sponsor's financial means to support the respondent, nor does the Immigration Judge's decision assess the purported sponsor's credibility based on how the individual knows the respondent or the nature of their relationship. *See Matter of R-A-V-P-*, 27 I&N Dec. at 806 (providing that a friend's willingness to financially assist a respondent, without independent evidence establishing the friend's ability to do so, is insufficient to adequately ensure the respondent's appearance at removal proceedings); *Matter of Dobrotvorskii*, 29 I&N Dec. 211, 213 (BIA 2025) ("The existence of a valid, reliable, and credible sponsor is relevant to the determination of flight risk."). On remand, the Immigration Judge should provide comprehensive findings of fact and legal analysis ascertaining the credibility and reliability of the purported bond sponsor. *See Matter of Dobrotvorskii*, 29 I&N Dec. at 213; 8 C.F.R. § 1003.1(d)(3)(i) (2026).

In summary, on remand, the Immigration Judge should make specific findings grounded in the record regarding the reliability and sufficiency of the respondent's residence, sponsor, and prospects of qualifying for and obtaining lawful status, in reassessing whether the respondent has met his burden of demonstrating that his risk of flight may be mitigated by bond. *See Matter of E-Y-F-G-*, 29 I&N Dec. at 103–04. The Immigration Judge may take any other action deemed appropriate for the resolution of these proceedings. In remanding, we express no opinion as to the ultimate

outcome of these proceedings. *See Matter of L-O-G-*, 21 I&N Dec. 413, 422 (BIA 1996).

ORDER: The record is remanded for further proceedings and for the entry of a new decision consistent with this opinion.