Matter of T-C-A-, Respondent

Decided February 24, 2022

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

An applicant for adjustment of status under section 209(b) of the Immigration and Nationality Act, 8 U.S.C. § 1159(b) (2018), must possess asylee status at the time of adjustment, and thus an applicant whose asylee status has been terminated cannot adjust to lawful permanent resident status under this provision.

FOR RESPONDENT: Raymond R. Bolourtchi, Esquire, St. Louis, Missouri

FOR THE DEPARTMENT OF HOMELAND SECURITY: Jeannette V. Dever, Associate Legal Advisor

BEFORE: Board Panel: WILSON and GOODWIN, Appellate Immigration Judges. Concurring and Dissenting Opinion: LIEBMANN, Temporary Appellate Immigration Judge.

GOODWIN, Appellate Immigration Judge:

In a decision dated February 26, 2020, an Immigration Judge denied the respondent's motion to terminate his removal proceedings and his applications for adjustment of status under section 209(b) of the Immigration and Nationality Act, 8 U.S.C. § 1159(b) (2018), in conjunction with a waiver of inadmissibility, withholding of removal pursuant to section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3) (2018), and protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted and opened for signature* Dec. 10, 1984, G.A. Res. 39/46, 39 U.N. GAOR Supp. No. 51, at 197, U.N. Doc. A/RES/39/708 (1984) (entered into force June 26, 1987; for the United States Apr. 18, 1988) ("Convention Against Torture"). The respondent has appealed from this decision. The appeal will be dismissed.

I. FACTUAL AND PROCEDURAL HISTORY

The respondent is a native and citizen of Albania who first entered the United States in 2001. He remained in this country until 2008, when he was ordered removed. In 2012, he was granted asylum as a derivative based on his father's application. He was later convicted of bank fraud in violation of 18 U.S.C. § 1344(2) (2012), and aggravated identity theft in violation of

18 U.S.C. § 1028A(a)(1) (2012). He was sentenced to 20 months in prison for bank fraud and 24 months of imprisonment for the identity theft offense.

Based on these convictions, the respondent was placed in removal proceedings and charged with removability under, among other grounds, section 237(a)(2)(A)(iii) of the Act, 8 U.S.C. § 1227(a)(2)(A)(iii) (2018), as a respondent convicted of an aggravated felony involving fraud or deceit in which the loss to the victim or victims exceeds $10,000, as defined in section 101(a)(43)(M)(i) of the Act, 8 U.S.C. § 1101(a)(43)(M)(i) (2018).[1] The respondent conceded that he is removable as charged. Because the respondent's aggravated felony conviction qualifies as a particularly serious crime for purposes of asylum, the Department of Homeland Security ("DHS") moved to terminate his asylee status before the Immigration Judge. Sections 208(b)(2)(A)(ii), (B)(i), (c)(2)(B) of the Act, 8 U.S.C. § 1158(b)(2)(A)(ii), (B)(i), (c)(2)(B) (2018); 8 C.F.R. § 1208.24(a)(2) (2020). The Immigration Judge granted the DHS's motion and terminated the respondent's asylee status.

The respondent then moved to terminate his removal proceedings pursuant to *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), arguing that the Immigration Judge lacked jurisdiction over his proceedings because his notice to appear fails to specify the time and date of his initial removal hearing. The Immigration Judge denied the respondent's motion to terminate. The respondent applied for relief and protection from removal in the form of adjustment of status under section 209(b) in conjunction with a waiver of his inadmissibility under section 209(c) of the Act, withholding of removal pursuant to the Act, and protection under the Convention Against Torture. The Immigration Judge denied all of these applications.

On appeal, the respondent challenges the Immigration Judge's conclusion that the termination of his asylee status renders him statutorily ineligible for adjustment of status under section 209(b) of the Act.[2] He also challenges the Immigration Judge's decision to deny his applications for withholding of removal pursuant to the Act and protection under the Convention Against Torture, as well as his motion to terminate.

---

[1] The respondent was also charged with removability under section 237(a)(2)(A)(ii) of the Act, for having been convicted of two or more crimes involving moral turpitude not arising out of a single scheme of criminal misconduct.

[2] Both parties submitted supplemental briefing addressing whether the termination of the respondent's status as an asylee precludes him from applying for adjustment of status under section 209(b) of the Act, and the DHS submitted a response to the respondent's supplemental brief. We acknowledge with appreciation the thoughtful arguments in the parties' submissions.

II. ANALYSIS

A. Adjustment of Status

In determining whether a respondent may apply for adjustment of status under section 209(b) of the Act after his or her asylee status has been terminated, we begin by considering whether section 209 of the Act clearly and unambiguously answers this question. *See Republic of Sudan v. Harrison*, 139 S. Ct. 1048, 1056 (2019) ("[W]e begin 'where all such inquiries must begin: with the language of the statute itself.'" (citation omitted)). We employ "traditional tools of statutory construction" to determine whether Congress has explicitly spoken on this issue. *Chevron, U.S.A, Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 n.9 (1984) ("*Chevron*"). "When called on to resolve a dispute over a statute's meaning, [we] normally seek[] to afford the law's terms their ordinary meaning at the time Congress adopted them." *Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1480 (2021); *see also United States v. George*, 946 F.3d 643, 645 (4th Cir. 2020) (stating that in interpreting a statute, we "first and foremost strive to implement congressional intent by examining the plain language of the statute," which we determine "by reference to its words' 'ordinary meaning at the time of the statute's enactment'" (citations omitted)).

In relevant part, section 209(b) of the Act provides:

> The . . . Attorney General, in the . . . Attorney General's discretion and under such regulations as the . . . Attorney General may prescribe, may adjust to the status of an alien lawfully admitted for permanent residence the status of any alien granted asylum who—
>
> (1) applies for adjustment,
>
> (2) has been physically present in the United States for at least one year after being granted asylum,
>
> (3) continues to be a refugee within the meaning of section 101(a)(42)(A) or a spouse or child of such a refugee,
>
> (4) is not firmly resettled in any foreign country, and
>
> (5) is admissible (except as otherwise provided under subsection (c)) as an immigrant under this Act at the time of examination for adjustment of such alien.

Closely tracking the Act, the implementing regulation states:

> [T]he status of any alien who has been granted asylum in the United States may be adjusted to that of an alien lawfully admitted for permanent residence, provided the alien:
>
> (i) Applies for such adjustment;
>
> (ii) Has been physically present in the United States for at least one year after having been granted asylum;

> (iii) Continues to be a refugee within the meaning of section 101(a)(42) of the Act, or is the spouse or child of a refugee;
> (iv) Has not been firmly resettled in any foreign country; and
> (v) Is admissible to the United States as an immigrant under the Act at the time of examination for adjustment without regard to paragraphs (4), (5)(A), (5)(B), and (7)(A)(i) of section 212(a) of the Act, and
> (vi) has a refugee number available under section 207(a) of the Act.

8 C.F.R. § 1209.2(a)(1) (2021); *see also* 8 C.F.R. § 209.2(a)(1) (2021) (covering adjustment of status under section 209(b) of the Act before the United States Citizenship and Immigration Services for those who have not been placed in removal proceedings).

The text and legislative history of section 209(b) do not reveal whether Congress clearly intended adjustment of status under this provision to be available to respondents whose asylee status has been terminated. *Cf. Negusie v. Holder*, 555 U.S. 511, 518 (2009) (finding the provisions underlying the "persecutor bar" to asylum and withholding of removal pursuant to the Act to be ambiguous where it was not "clear that Congress had an intention on the precise question at issue"). Further, the phrase "the status of any alien granted asylum" in section 209(b) may be interpreted in different ways.

The respondent and dissent argue that "granted" in this phrase should be read as a past tense verb, and thus an applicant is eligible for adjustment if, at any time in the past, he or she was granted asylum, regardless of whether that applicant currently maintains asylee status. However, Congress could have intended to use the past participle "granted" as an adjective, describing an applicant's present status. *See Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1722 (2017) ("Past participles like 'owed' are routinely used as adjectives to describe the present state of a thing . . . ."). Under this reading of section 209(b), "the status of any alien granted asylum" would refer to an applicant who presently maintains asylee status. Because this statutory language is reasonably susceptible to different interpretations, we conclude that section 209(b) of the Act is ambiguous as to whether a respondent may apply for adjustment of status under that section after his or her asylee status has been terminated. *See Matter of Castillo Angulo*, 27 I&N Dec. 194, 197 (BIA 2018); *see also Mahmood v. Sessions*, 849 F.3d 187, 193 (4th Cir. 2017) (concluding that section 209(b) is "ambiguous," in part, because it is susceptible to multiple, "plausible" readings).

Because the statute is ambiguous, it is necessary for the Board to develop a reasonable statutory interpretation as to whether adjustment of status under section 209(b) of the Act is available to a respondent whose asylee status has been terminated. *See Nat'l Cable & Telcomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 980 (2005) ("[A]mbiguities in statutes within an

agency's jurisdiction to administer are delegations of authority to the agency to fill the statutory gap in reasonable fashion."); *Chevron*, 467 U.S. at 843–44 ("The power of an administrative agency to administer a congressionally created . . . program necessarily requires the formulation of policy and the making of rules to fill any gap left, implicitly or explicitly, by Congress." (citation omitted)). In construing an ambiguous statutory phrase, "[t]he broader context . . . of the statute provides considerable assistance." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 345 (1997); *accord Raplee v. United States*, 842 F.3d 328, 332 (4th Cir. 2016). An analysis of the overall statutory context may not resolve an ambiguity, but it will assist in determining which meaning applies when considering the statute's purpose. *See John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank*, 510 U.S. 86, 94–97 (1993). Upon considering the relevant language of section 209(b) of the Act and the governing regulation, our past precedents, and the overall statutory context, we conclude that a respondent whose asylee status has been terminated is statutorily ineligible for adjustment of status under this provision. *See Sijapati v. Boente*, 848 F.3d 210, 217 (4th Cir. 2017) (concluding that the Board's interpretation of an ambiguous statute was entitled to *Chevron* deference where the Board considered the language of the provision, the overall design of the statute, judicial constructions of the statute, and its own precedent).

The relevant portion of section 209(b) provides that "the Attorney General . . . may adjust to the status of an alien lawfully admitted for permanent residence the *status* of any alien *granted* asylum." (Emphases added.) The implementing regulation (which we are bound to follow) states that "[t]he provisions of this section shall be the sole and exclusive procedure for adjustment of status by an asylee admitted under section 208 of the Act whose application is based on his or her asylee *status*." 8 C.F.R. § 1209.2(a) (emphasis added). Both the statute and regulation require applicants to possess an initial "status" before they may adjust to lawful permanent resident status. We conclude that this initial "status" is asylee status. *See Matter of C-J-H-*, 26 I&N Dec. 284, 285 (BIA 2014) (concluding that "section 209(b) applies to asylees seeking to adjust status to that of a lawful permanent resident"); *see also Mahmood*, 849 F.3d at 191 (stating that section 209(b) "contemplates two statuses—an 'alien granted asylum' and an 'alien lawfully admitted for permanent residence'"—and "describes a process of 'adjustment' from the former 'to' the latter").

At the time Congress enacted section 209(b) of the Act,[3] the term "status" was defined as a person's legal "[s]tanding; state or condition" and

[3] Congress enacted section 209(b) of the Act through section 201 of the Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102, 106.

his or her "legal relation . . . to [the] rest of the community." *Status*, *Black's Law Dictionary* (5th ed. 1979); *see also Status*, *Webster's New Collegiate Dictionary* (1977) (defining "status" as "the condition of a person or thing in the eyes of the law" and "a position or rank in relation to others"). We have previously concluded that the term '"[s]tatus' is a term of art, which is used in the immigration laws in a manner consistent with the common legal definition," denoting "someone who possesses a certain legal standing, e.g., classification as an immigrant or nonimmigrant." *Matter of Blancas*, 23 I&N Dec. 458, 460 (BIA 2002). Relying on *Matter of Blancas*, we concluded that the phrase "admitted in any status" in section 240A(a)(2) of the Act, 8 U.S.C. § 1229b(a)(2) (2018), requires an applicant for cancellation of removal under that provision to possess "some form of *lawful status at the time of admission* that would allow him or her to enter into the United States as an immigrant or nonimmigrant." *Matter of Castillo Angulo*, 27 I&N Dec. at 199 (emphasis added). We likewise conclude that section 209(b) of the Act uses the phrase "the status of any alien granted asylum" to describe a respondent who possesses lawful asylee status at the time of adjustment. Thus a respondent who lacks asylee status at the time of adjustment, because that status has been terminated, is ineligible for relief under this provision.

This conclusion is a logical extension of our prior precedents and binding circuit law. *See Matter of N-A-I-*, 27 I&N Dec. 72, 75 (BIA 2017); *Matter of C-J-H-*, 26 I&N Dec. at 285; *see also Mahmood*, 849 F.3d at 194–95. In *Matter of N-A-I-*, we held that "[i]n the context of section 209(b) of the Act, the adjustment entails a change from 'the status of an[] alien granted asylum' to 'the status of an alien lawfully admitted for permanent residence,' which extinguishes the alien's asylee status." 27 I&N Dec. at 75 (second alteration in original). As a result, an asylee who adjusts under section 209(b) to lawful permanent residence "does not retain the *status of an alien granted asylum* and therefore the restrictions on removal" accorded to asylees "no longer apply." *Id.* (emphasis added). We likewise held in *Matter of C-J-H-*, 26 I&N Dec. at 285, that an asylee who adjusts status under section 209(b), "no longer [has] the *status* of an asylee" and thus has "no *status* that would authorize [him or her] to readjust" under that provision. (Emphases added.) The United States Court of Appeals for the Fourth Circuit, in whose jurisdiction this case arises, has deferred to our holding in *Matter of C-J-H-*. *See Mahmood*, 849 F.3d at 194–95 (stating that the Board reasonably concluded in *Matter of C-J-H-* that section 209(b) "provides that once an alien adjusts to lawful permanent resident status, he no longer holds the status of an asylee" and cannot readjust under that provision). If Congress had intended the phrase "the status of any alien granted asylum" in section 209(b) to denote any respondent granted asylum in the past, irrespective of whether he or she currently retains asylee status, we would have reached different results in both *Matter of N-A-I-* and *Matter of C-J-H-*.

We also believe the respondent's and the dissent's interpretation of section 209(b) renders the term "status" in the phrase "status of any alien granted asylum" in section 209(b) of the Act surplusage. *See Freytag v. Comm'r*, 501 U.S. 868, 877 (1991) (expressing "a deep reluctance to interpret a statutory provision so as to render superfluous other provisions in the same enactment" (citation omitted)). If Congress had intended any respondent granted asylum in the past to be eligible for adjustment of status under section 209(b), regardless of whether he or she currently possesses asylee status, it could have simply stated that a respondent must be "any alien granted asylum" and omitted the term "status" from this phrase. By adding "status" before the phrase "of any alien granted asylum," Congress signaled it only intended respondents possessing the legal standing of an asylee to be eligible for adjustment under section 209(b).

Moreover, the broader statutory context reveals that Congress knew how to omit an initial status requirement in other provisions of the Act. Congress explicitly stated that a respondent need not possess any form of lawful status to apply for asylum. *See* section 208(a)(1) of the Act (providing that a respondent may apply for asylum "*irrespective of such alien's status*" (emphasis added)). The absence of an initial status requirement in section 208(a) and its presence in section 209(b) supports our conclusion that Congress intended applicants to have some form of legal standing before they could obtain adjustment of status under section 209(b). We believe Congress only intended to extend this form of relief to those currently possessing asylee status. *See generally INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (alteration in original) (citation omitted)).

Asylee status "does not convey a right to remain permanently in the United States, and may be terminated." Section 208(c)(2) of the Act. By providing for termination of asylee status, Congress must have intended for some consequence to flow from the loss of such status. But construing the phrase "the status of any alien granted asylum" as covering respondents whose asylee status has been terminated would divest the termination of asylee status of any consequences. It is highly unlikely Congress intended such a result. Thus, the broader statutory scheme governing the grant and termination of asylee status under sections 208(a)(1) and (c)(2) supports our conclusion that the termination of such status renders an applicant ineligible for adjustment of status under section 209(b) of the Act.

Finally, this Board has held that Immigration Judges have discretion to defer judgment on the termination of a respondent's asylee status based on an aggravated felony pending consideration of that respondent's eligibility for adjustment of status under section 209(b) of the Act with a section 209(c)

waiver. *Matter of K-A-*, 23 I&N Dec. 661, 665 (BIA 2004). We later ruled that an Immigration Judge should *ordinarily* make a threshold determination regarding termination of asylee status before resolving removability and eligibility for relief. *Matter of V-X-*, 26 I&N Dec. 147, 149 (BIA 2013). We identified adjustment of status under section 209(b) of the Act as an exception to this rule because it is a form of relief that would make termination of asylee status moot. *Id.* at 149 n.1 (citing *Mater of K-A-*, 23 I&N Dec. 661). Holding that a respondent whose asylee status has been terminated may still apply for adjustment of status under section 209(b) of the Act would render *Matter of K-A-* and *Matter of V-X-* meaningless. Moreover, considering that Immigration Judges have discretion to defer ruling on a motion to terminate a respondent's asylee status, our interpretation would not vitiate the waiver created by Congress in section 209(c) of the Act, which allows us to waive the applicability of certain grounds of removability for purposes of section 209(b).

For these reasons, we hold that the phrase "the status of any alien granted asylum" requires an applicant for adjustment of status under section 209(b) of the Act to possess asylee status at the time of adjustment and thus an applicant whose asylee status has been terminated cannot adjust to lawful permanent resident status under this provision.

We acknowledge that the Fifth Circuit reached a contrary conclusion in *Siwe v. Holder*, 742 F.3d 603, 612 (5th Cir. 2014). However, that case is not binding in this matter, which arises in the Fourth Circuit. *See Matter of Anselmo*, 20 I&N Dec. 25, 31 (BIA 1989) ("We are not required to accept an adverse determination by one circuit court of appeals as binding throughout the United States.").

We also respectfully disagree with the Fifth Circuit's determination that the plain language of section 209(b) unambiguously establishes that asylum, once granted, need not remain in effect when a respondent applies for adjustment of status under this provision. At the time it made this determination, the court did not have the benefit of the Supreme Court's decision in *Henson*. The Supreme Court's observation that past participles "are routinely used as adjectives to describe the present state of a thing," *Henson*, 137 S. Ct. at 1722, indicates that the past participle "granted" in section 209(b) could be read as an adjective describing an applicant's present status as an asylee.

We likewise disagree with the court's reliance on section 209(a) of the Act, which provides for the admission of certain refugees as lawful permanent residents. Because section 209(a)(1)(A) of the Act expressly requires that an applicant's "admission [as a refugee] has not been terminated" when a respondent applies for relief under section 209(a), the court found that the absence of such a requirement in section 209(b) suggests that Congress did not intend to require asylees to continue to maintain such

status at the time of adjustment under this provision. However, this reading of sections 209(a) and (b) would provide unique relief to respondents whose asylee status has been terminated, while precluding such relief for similarly situated respondents whose refugee status has been terminated, contravening Congress' intention to give "asylees and refugees [a] similar status under the law." *Matter of C-J-H-*, 26 I&N Dec. at 286 (quoting *Robleto-Pastora v. Holder*, 591 F.3d 1051, 1061 (9th Cir. 2010)).

We also disagree with the court's conclusion that our reading of section 209(b) renders inoperative section 209(c)—which provides for a discretionary waiver of certain criminal grounds of removability, including an aggravated felony conviction, for certain applicants for adjustment of status under section 209(b). Under our reading, section 209(c) of the Act remains operative where, for example, an Immigration Judge has elected to defer ruling on a motion to terminate a respondent's asylee status pending consideration of an application for adjustment under section 209(b). *See Matter of V-X-*, 26 I&N Dec. at 149 & n.1; *Matter of K-A-*, 23 I&N Dec. at 665. Section 209(c) likewise applies where the ground to be waived is different from the ground for termination. Thus, our interpretation of the relevant ambiguous statutory language does not render section 209(c) of the Act superfluous, and we respectfully decline to follow the court's holding in *Siwe* outside the Fifth Circuit.

B. Withholding of Removal

We will additionally affirm the Immigration Judge's determination that the respondent is statutorily ineligible for withholding of removal under the Act and under the Convention Against Torture based on his conviction for a particularly serious crime.[4] Section 241(b)(3)(B)(ii) of the Act; 8 C.F.R. § 1208.16(d)(2) (2020). The Immigration Judge determined that the elements of the respondent's convictions for bank fraud and aggravated identity theft potentially bring these offenses "within the ambit of a particularly serious crime."[5] *Matter of N-A-M-*, 24 I&N Dec. 336, 342 (BIA 2007). Thus, the Immigration Judge could consider "all reliable information . . . in making a particularly serious crime determination." *Id.* at 342.

[4] Because the respondent was not sentenced to an aggregate term of imprisonment of at least 5 years, his aggravated felony conviction does not qualify as a per se particularly serious crime barring him from withholding of removal under section 241(b)(3)(B)(ii) of the Act.

[5] The respondent does not challenge this determination, and we consider the issue waived. *See, e.g.*, *Matter of D-G-C-*, 28 I&N Dec. 297, 297 n.1 (BIA 2021).

The record reflects that the respondent adopted a victim's identity and opened bank accounts using this identity. The respondent then altered and counterfeited official checks payable to the victim and deposited those checks into accounts at other financial institutions for "the purpose of withdrawing the fraudulently obtained funds and converting them" to his own use. Further, the respondent misrepresented himself to the Missouri Department of Motor Vehicles as the victim and obtained a license in the victim's name, which he later renewed. The respondent also opened four bank accounts in the victim's name, as well as two accounts under the name of a fictional business he portrayed the victim as the owner. The respondent was sentenced to 44 months of imprisonment and 5 years of supervised release and was ordered to pay $73,251.02 in restitution for his crimes. The length of the respondent's sentence underscores the seriousness of his offense. *Cf. Matter of R-A-M-*, 25 I&N Dec. 657, 662 (BIA 2012) (characterizing 280 days in prison as "not a light sentence").

Like the Immigration Judge, we acknowledge that the respondent made full restitution to the victim and the financial institutions he defrauded. However, the Immigration Judge did not clearly err in finding that the respondent inflicted serious personal and financial harm on the victim and these financial institutions. While the respondent's crime did not involve physical harm to the victim, he engaged in extensive fraud and counterfeiting, stealing a name and identity of another and using it to enrich himself with tens of thousands of dollars. *See Matter of L-S-*, 22 I&N Dec. 645, 649 (BIA 1999) ("[T]here may be instances where crimes against property will be considered to be particularly serious."); *see also Gao v. Holder*, 595 F.3d 549, 557–58 (4th Cir. 2010) (upholding our determination that a conviction for unlawful export of military technology was particularly serious because, even though the perpetrator did not "actually harm[] anyone," she "placed her desire for financial gain ahead of the security interests of the United States"). Considering the nature of the respondent's conviction, the underlying facts, and the length of the sentence imposed, we conclude the respondent has not demonstrated that the particularly serious crime bar under section 241(b)(3)(B)(ii) of the Act does not apply. *See* 8 C.F.R. § 1208.16(d)(2) (providing that where the evidence indicates that a mandatory bar to relief applies, it is the applicant's burden to show, by a preponderance of the evidence, that the bar is inapplicable). We will therefore affirm the Immigration Judge's ruling that the respondent is statutorily ineligible for withholding of removal under the Act and the Convention Against Torture.[6] Section 241(b)(3)(B)(ii) of the Act; 8 C.F.R. § 1208.16(d)(2).

[6] We emphasize that not all fraud or financial crimes, or other crimes that do not cause physical harm or endangerment to persons, will be *particularly* serious within the meaning

We will also affirm the Immigration Judge's denial of the respondent's application for withholding of removal under the Act on the merits. The respondent has not challenged the Immigration Judge's finding that he did not raise a claim of past persecution, and the record does not support such a claim. *See, e.g.*, *Matter of D-G-C-*, 28 I&N Dec. 297, 297 n.1 (BIA 2021) (noting that issues not raised on appeal are deemed waived). Thus, the respondent may not benefit from the regulatory presumption of a clear probability of persecution on account of a protected ground. *See* 8 C.F.R. § 1208.16(b)(1)(i). He therefore retains the burden of establishing that he more likely than not will be persecuted on account of a protected ground under section 241(b)(3) of the Act. 8 C.F.R. § 1208.16(b)(2).

We will not disturb the Immigration Judge's finding that the respondent fears a nebulous group he described as his father's "political enemies." On appeal, the respondent asserts that the Immigration Judge should have reviewed his father's immigration file to better understand the relevant facts. Because the respondent bears the burden of proving eligibility for relief, however, it was incumbent upon him to submit his father's file. *See* 8 C.F.R. § 1208.16(b)(2); *see also* 8 C.F.R. § 1240.8(d) (2021).

The record also supports the Immigration Judge's determination that the respondent's fear of future persecution is speculative, because it is based on events that befell his father in the 1990s. The Immigration Judge found that no one harmed the respondent personally before he left Albania for the first time in 2001, during the time he lived there again between 2008 and 2012, or after he relocated to the United States. Thus, even assuming the particularly serious crime bar did not apply, the Immigration Judge did not clearly err in finding that the respondent did not establish the requisite likelihood that he will be persecuted in Albania. *See Turkson v. Holder*, 667 F.3d 523, 529 (4th Cir. 2012) ("[A]n [Immigration Judge's] predictions of future conditions are factual findings entitled to deference under the clearly erroneous standard."); *Matter of Z-Z-O-*, 26 I&N Dec. 586, 590 (BIA 2015) (reviewing an Immigration Judge's predictive findings for clear error).

C. Deferral of Removal

Although the respondent's conviction for a particularly serious crime bars him from seeking withholding of removal under the Convention Against Torture, it does not bar him from seeking deferral of removal under the Convention Against Torture pursuant to 8 C.F.R. § 1208.17(a) (2021). The respondent's claim is based on a series of suppositions: (1) his father's

---

of sections 208(b)(2)(A)(ii) and 241(b)(3)(B)(ii) of the Act. However, given the specific factual findings in this case, the respondent has not shown that his crime is not particularly serious.

political enemies will learn of his return to Albania and seek him out; (2) once they locate him, they will torture him; and (3) an Albanian official or individual acting in an official capacity will acquiesce to this harm. The Immigration Judge did not clearly err when she found the respondent had not shown that the first link in this "hypothetical chain of events is more likely than not to happen." *Matter of J-F-F-*, 23 I&N Dec. 912, 917 (A.G. 2006); *see also Matter of J-C-H-F-*, 27 I&N Dec. 211, 218 (BIA 2018) (reviewing an Immigration Judge's predictive findings regarding the likelihood of torture for clear error). The record evidence does not indicate that these enemies would learn of the respondent's return to Albania and seek him out for harm. The respondent previously returned to Albania in 2008 and traveled between Albania and Montenegro multiple times between 2008 and 2012 without incident.[7] At no point during that time did the alleged persecutors learn of his return and seek him out.

We recognize that the respondent's father testified he had to secretly arrive at and depart from the international airport in Tirana, Albania. The Immigration Judge did not credit this testimony. Even if we were to credit it, the Immigration Judge was entitled to find the father's testimony unpersuasive in light of evidence that other members of the respondent's family have used the same airport and stayed in Albania without issue. *See Garland v. Ming Dai*, 141 S. Ct. 1669, 1680 (2021) ("[E]ven if the [Board] treats an alien's evidence as credible, [it] need not find his evidence persuasive or sufficient to meet the burden of proof.").

The Immigration Judge properly determined that the record evidence does not establish it is more likely than not an Albanian official or an individual acting in an official capacity would acquiesce in the torture of the respondent. *See Cruz-Quintanilla v. Whitaker*, 914 F.3d 884, 890 (4th Cir. 2019) (holding that an Immigration Judge's predictive findings as to how officials will likely act are reviewed as findings of fact, but whether those actions qualify as acquiescence is a legal question reviewed de novo). The country conditions evidence in the record includes a State Department country conditions report and travel advisory, as well as a publication from a nongovernmental organization.[8] Although the country conditions report

[7] That the respondent resided in multiple cities in Albania during this time additionally supports the Immigration Judge's determination that he could relocate to a part of Albania where he is not likely to be harmed. *See* 8 C.F.R. § 1208.16(c)(3)(ii).

[8] The Immigration Judge properly evaluated all relevant evidence of record concerning the risk of torture to the respondent from all sources combined, and correctly determined that only the State Department country conditions report is relevant to the respondent's specific claim. *See Rodriguez-Arias v. Whitaker*, 915 F.3d 968, 973 (4th Cir. 2019) (holding that the risk of torture from all sources should be combined when determining the likelihood of torture); *cf. Quintero v. Garland*, 998 F.3d 612, 646–47 (4th Cir. 2021)

reflects that there have been some reports of torture in Albania perpetrated by law enforcement, all of these reported abuses were perpetrated by officials at a single police station in that country and the Albanian Government investigated those incidents. *See* 8 C.F.R. § 1208.16(c)(3)(iv). We will therefore affirm the Immigration Judge's decision to deny the respondent's application for deferral of removal under the Convention Against Torture.

D. Termination

Finally, we will deny the respondent's motion to terminate his removal proceedings. Although the respondent's notice to appear does not specify the time and date of his initial removal hearing, he was later served with a compliant notice of hearing specifying this information. Therefore, jurisdiction properly vested with the Immigration Court and neither the Supreme Court's decision in *Pereira* nor its decision in *Niz-Chavez* require us to terminate these removal proceedings. *See Matter of Arambula-Bravo*, 28 I&N Dec. 388, 390–92 (BIA 2021); *see also Cedillos-Cedillos v. Barr*, 962 F.3d 817, 823–24 (4th Cir. 2020). Accordingly, the respondent's appeal is dismissed.

ORDER: The respondent's appeal is dismissed.

CONCURRING AND DISSENTING OPINION: Beth S. Liebmann, Temporary Appellate Immigration Judge

I respectfully dissent only from the majority's conclusion that the termination of the respondent's asylee status bars him from applying for adjustment of status under section 209(b) of the Immigration and Nationality Act, 8 U.S.C. § 1159(b) (2018).[1] I disagree with the majority's finding that section 209(b) of the Act is ambiguous regarding whether a noncitizen becomes ineligible for adjustment of status under that section after the noncitizen's asylee status has been terminated. On the contrary, I find that the controlling statutory language unambiguously establishes that an asylee who has not previously adjusted to lawful permanent resident status may pursue adjustment of status under section 209(b) of the Act, even if the noncitizen's asylee status has been terminated.

(remanding because the Board and the Immigration Judge failed to "meaningfully engage with the extensive country-conditions evidence").

[1] I concur with all other aspects of the majority's decision, including its conclusions that the respondent is ineligible for withholding of removal under the Act as well as withholding and deferral of removal under the Convention Against Torture and that termination is not warranted.

I. STATUTORY CONSTRUCTION

In pertinent part, the Act states that the Attorney General "may adjust to the status of an alien lawfully admitted for permanent residence the status of *any alien granted asylum*." Section 209(b) of the Act (emphasis added). The phrase "any alien granted asylum" is not synonymous with the term "asylee." I conclude that the language "any alien granted asylum" is unambiguous and controlling with respect to the question presented. In drafting section 209(b) of the Act, Congress did not specify that the noncitizen must remain in asylee status to be eligible for adjustment of status under that section. If Congress had indeed intended to require that a noncitizen remain in asylee status to be eligible to adjust status under section 209(b), it could have specified that "the status of any asylee may be adjusted," rather than refer to a noncitizen granted asylum. Instead, the fact that the noncitizen was "granted asylum" is plainly dispositive, and Congress only required in section 209(b)(3) of the Act that the noncitizen "continues to be a refugee within the meaning of section 101(a)(42)(A) or a spouse or child of such a refugee." *See Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1738 (2020) (stating that a court should "interpret[] a statute in accord with the ordinary public meaning of its terms at the time of its enactment"); *United States v. George*, 946 F.3d 643, 645 (4th Cir. 2020) (noting that "[w]hen interpreting a statute, courts . . . examin[e] the plain language of the statute," which is determined by the ordinary meaning of the words at the time of the statute's enactment); *see also United States v. Abdelshafi*, 592 F.3d 602, 607 (4th Cir. 2010) ("[I]n 'interpreting the plain language of a statute, we give the terms their ordinary, contemporary, common meaning, absent an indication Congress intended' the statute's language 'to bear some different import.'" (citation omitted)); *Matter of Briones*, 24 I&N Dec. 355, 361 (BIA 2007) (noting that "the touchstone of [statutory interpretation] is the plain language of the statute" and the Board rarely looks "past the unambiguous meaning of statutory language"). The meaning of the term "granted" is ordinary and the language plain. Consequently, the inquiry should end, because the Board "must give effect to the unambiguously expressed intent of Congress." *See Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984).

Moreover, I am not persuaded by the majority's contentions regarding the import of the term "status" in section 209(b) of the Act. The majority finds it dispositive that the Act provides the Attorney General "may adjust to the *status* of an alien lawfully admitted for permanent residence the *status* of any alien granted asylum." Section 209(b) of the Act (emphases added). However, having the status of an "asylee" is not the same as the status of being an "alien granted asylum." I disagree with the majority that the status of any alien granted asylum only describes an alien who possesses lawful

asylee status at the time of adjustment. *See Mahmood v. Sessions*, 849 F.3d 187, 191 (4th Cir. 2017) (stating section 209(b) contemplates "an alien granted asylum" as one of two statuses). The Act does not provide that a noncitizen's asylee status must be *current*, only that the applicant "continues to be a refugee within the meaning of section 101(a)(42)(A) or a spouse or child of such a refugee." Section 209(b)(3) of the Act. The rules of statutory interpretation preclude the Board from adding a continuing asylee status requirement to section 209(b) of the Act where Congress chose not to do so. The controlling words in the Act are "any alien granted asylum," which, by their plain and ordinary meaning, do not reflect a continuing status requirement of being an asylee. A noncitizen cannot change the status of having been "granted asylum," as it is in the past. Reading in a requirement of current asylee status, where one is not plainly evident, would be an unauthorized atextual interpretation. *See Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1490 (2021) (Kavanaugh, J., dissenting); *cf. id*. at 1480 (majority opinion) (rejecting the government and dissent's interpretation of the statute as not supported by the text). I would decline to do so.[2]

Additionally, an applicant for adjustment of status pursuant to section 209(b) of the Act must establish admissibility, except as otherwise provided under section 209(c). Section 209(b)(5) of the Act. Section 209(c) specifies that the grounds of inadmissibility at sections 212(a)(4), (5), and (7)(A) of the Act, 8 U.S.C. § 1182(a)(4), (5), (7)(A) (2018), are inapplicable to a noncitizen seeking adjustment of status under section 209(a) of the Act (as one admitted to the United States as a refugee) or section 209(b) (as one granted asylum). The Attorney General may waive any other provision of section 212(a) of the Act (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) "for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest." Section 209(c) of the Act. The type of conduct that would cause termination of a noncitizen's asylee status is considerably more limited than that which would render a noncitizen inadmissible, such that a section 209(c) waiver would be required.

[2] The majority observes that the Board has interpreted "status" as connoting someone possessing a certain legal standing. *Matter of Blancas*, 23 I&N Dec. 458, 460 (BIA 2002). Thus, we have held that the phrase "admitted in any status" in section 240A(a)(2) of the Act, 8 U.S.C. § 1229b(a)(2) (2018), requires applicants for cancellation of removal to possess some form of lawful immigration status at the time of admission. *Matter of Castillo Angulo*, 27 I&N Dec. 194, 199 (BIA 2018). *Matter of Castillo Angulo* is distinguishable because the phrase "in any status" modifies "admitted" in section 240A(a)(2) of the Act, clearly placing the focus on the status possessed at the time of admission. By contrast, section 209(b) indicates that a noncitizen may adjust to "the status of any alien lawfully admitted for permanent residence" from "the status of any alien granted asylum." As discussed, Congress did not require the adjustment to be from *current* asylee status and we may not read in such a requirement where one is not plainly evident.

Compare section 208(c)(2) of the Act, 8 U.S.C. § 1158(c)(2) (2018), *with* section 212(a) of the Act. The respondent's convictions subject him to removal as an aggravated felon and as an individual convicted of two or more crimes involving moral turpitude, as well as termination of his asylee status. Congress created the discretionary mechanism in section 209(c) of the Act, however, for determining whether it would nonetheless be in this country's best interests to grant him adjustment of status under section 209(b). The majority's interpretation of section 209(b) as providing that any noncitizen whose asylee status has been terminated for particular conduct—here, an aggravated felony conviction—is ineligible for adjustment of status under that section would thus render the section 209(c) waiver surplusage. *See Colautti v. Franklin*, 439 U.S. 379, 392 (1979) (noting that the presumption against surplusage is an "elementary canon of construction"). If termination renders noncitizens ineligible for adjustment of status under section 209(b) of the Act *ipso facto*, there would never be any reason for them to seek a section 209(c) waiver.[3]

I further conclude that section 209(a) of the Act, which governs adjustment of status by noncitizens admitted to the United States as refugees, supports the interpretation that a noncitizen whose asylee status has been terminated may still apply for adjustment of status under section 209(b). Section 209(a)(1)(A) of the Act specifically requires that a refugee's status not have been terminated, whereas section 209(b) contains no such limitation on noncitizens whose asylee status has been terminated.[4] Instead, Congress

---

[3] The majority asserts that this is not the case because an Immigration Judge may defer a decision on termination of asylee status if a noncitizen is otherwise eligible for relief, including adjustment of status under section 209(b) of the Act in conjunction with a section 209(c) waiver. *See Matter of K-A-*, 23 I&N Dec. 661, 665 (BIA 2004). However, the Board has also held that an Immigration Judge should ordinarily make a threshold determination regarding termination of asylee status before resolving removability and eligibility for relief. *See Matter of V-X-*, 26 I&N Dec. 147, 149 (BIA 2013). *Matter of V-X-* does not clearly carve out an exception for "relief" in the form of adjustment of status under section 209(b) of the Act, as the majority asserts. The scenario posited by the majority is therefore unlikely to occur. Rather, as occurred in this case, it is more likely that Immigration Judges will terminate asylum at the onset of removal proceedings and find that a noncitizen is consequently ineligible to apply for adjustment of status under section 209(b) of the Act, thus depriving the noncitizen of the statutory right to seek a section 209(c) waiver.

[4] In full, the section governing adjustment of status under section 209(a) provides:

> (1) Any alien who has been admitted to the United States under section 207—
> (A) whose admission *has not been terminated* by . . . the Attorney General pursuant to such regulations as . . . the Attorney General may prescribe,
> (B) who has been physically present in the United States for at least one year, and

required that an applicant for adjustment of status pursuant to section 209(b) of the Act "continue[] to be a refugee within the meaning of section 101(a)(42)(A) or a spouse or child of such a refugee." Section 209(b)(3) of the Act. Sections 209(a) and 209(b) of the Act, which appear successively, illustrate that Congress purposely made continuing status a requirement for refugees to adjust status, but not for asylees to do so. *See George*, 946 F.3d at 647 (interpreting the plain meaning of a statute by looking to its neighboring subsections); *United States v. Johnson*, 915 F.3d 223, 229 (4th Cir. 2019) ("[W]e 'interpret the relevant words not in a vacuum, but with reference to the statutory context.'" (quoting *Torres v. Lynch*, 578 U.S. 452, 459 (2016))).

My reading of section 209(b) of the Act is supported by the regulations. The implementing regulation provides that "the status of any alien *who has been granted asylum in the United States* may be adjusted to that of an alien lawfully admitted for permanent residence." 8 C.F.R. § 1209.2(a)(1) (2021) (emphasis added). As in section 209(b), the regulation does not require that the noncitizen remain in asylee status to be eligible for adjustment of status; the fact that the noncitizen "has been granted asylum in the United States" is dispositive. *See id.*

The regulations further provide:

> An alien, who was granted asylum in the United States prior to November 29, 1990 (*regardless of whether or not such asylum has been terminated under section 208(b) of the Act*), *and is no longer a refugee* due to a change in circumstances in the foreign state where he or she feared persecution, may also have his or her status adjusted . . . to that of an alien lawfully admitted for permanent residence *even if he or she is no longer able to demonstrate that he or she continues to be a refugee within the meaning of section 101(a)(42) of the Act, or to be a spouse or child of such a refugee* or to have been physically present in the United States for at least one year after being granted asylum, so long as he or she is able to meet the requirements noted in paragraphs (a)(1)(i), (iv), and (v) of this section.

> (C) who has not acquired permanent resident status,
>
> shall, at the end of such year period, return or be returned to the custody of the Department of Homeland Security for inspection and examination for admission to the United States as an immigrant in accordance with the provisions of sections 235, 240, and 241.
>
> (2) Any alien who is found upon inspection and examination by an immigration officer pursuant to paragraph (1) or after a hearing before an immigration judge to be admissible (except as otherwise provided under subsection (c)) as an immigrant under this Act at the time of the alien's inspection and examination shall, notwithstanding any numerical limitation specified in this Act, be regarded as lawfully admitted to the United States for permanent residence as of the date of such alien's arrival into the United States.

(Emphasis added.)

8 C.F.R. § 1209.2(a)(2) (emphases added). The regulatory history of 8 C.F.R. § 1209.2(a)(2), enacted following section 104(d) of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978, 4985, states:

> The law also provides for the adjustment of certain aliens who have been granted asylum, but whose country conditions have changed *so that they no longer continue to be a refugee, as that term is defined in section 101(a)(42) of the Immigration and Nationality Act and who were or would be qualified for adjustment* as of November 28, 1990, *but for the requirement*[] . . . *that the alien continues to be a refugee or a spouse or child of such refugee*.

Adjustment Procedures for Aliens Granted Asylum, 56 Fed. Reg. 26,897, 26,897 (June 12, 1991) (codified at 8 C.F.R. pt. 209 (1992)) (emphases added). This shows that 8 C.F.R. § 1209.2(a)(2) was designed to make adjustment of status under section 209(b) of the Act available to certain noncitizens *who cannot satisfy section 209(b)(3*), which, as discussed previously, is the only continuing status requirement included by Congress in section 209(b). The regulations thus explicitly contemplate adjustment of status under section 209(b) of the Act continuing to be available in at least one circumstance in which a noncitizen's asylee status has been terminated.

Although it may appear counterintuitive to allow a noncitizen whose asylee status has been terminated to apply for adjustment of status under section 209(b) of the Act, even a "somewhat illogical" result obtained by application of a statute's plain terms does not authorize an atextual interpretation. *Matter of A. Vasquez*, 27 I&N Dec. 503, 507–08 (BIA 2019). This Board is bound to apply the plain language of the Act, which has been restated in its implementing regulations.

While I fully consider the question of statutory interpretation here, I also note that my interpretation is consistent with that of the United States Court of Appeals for the Fifth Circuit, the only circuit court of appeals to have addressed the issue presented. *See Siwe v. Holder*, 742 F.3d 603 (5th Cir. 2014). *See generally Bare v. Barr*, 975 F.3d 952, 975 (9th Cir. 2020) (observing that the issue at hand remains an open question outside the Fifth Circuit's jurisdiction). The Fifth Circuit provided in *Siwe* three reasons for holding that noncitizens may apply for adjustment of status under section 209(b) of the Act, even after termination of their asylee status. Although I would not rely on *Siwe*, which is not binding in this matter arising within the jurisdiction of the Fourth Circuit, *see Matter of Anselmo*, 20 I&N Dec. 25, 31 (BIA 1989), I disagree with the majority's determination that the Fifth Circuit's reasoning is unpersuasive.

First, as discussed above, section 209(b) of the Act does not provide that asylee status, once granted, must remain in effect when a noncitizen applies

for adjustment of status under that section. The Fifth Circuit therefore reasonably concluded that requiring an applicant for adjustment of status pursuant to section 209(b) of the Act to have current asylee status would contravene a statutory rule of interpretation by adding an unwritten requirement to the text of section 209(b). *See Siwe*, 742 F.3d at 608; *see also Bates v. United States*, 522 U.S. 23, 29 (1997) ("[W]e ordinarily resist reading words or elements into a statute that do not appear on its face.").

Second, the Fifth Circuit similarly compared the provisions governing adjustment of status under section 209(b) of the Act with those applicable to refugees seeking adjustment under section 209(a). The court persuasively found that even assuming arguendo the phrase "the status of any alien granted asylum" is ambiguous, the structure of section 209 of the Act does not support the interpretation that a noncitizen's asylee status must remain in effect upon application for adjustment of status pursuant to section 209(b). My reasoning is consistent with that of the court that sections 209(a)(1)(A) and 209(b)(3) of the Act illustrate that Congress knows how to make continuing status a requirement when it desires to do so. *See Siwe*, 742 F.3d at 608–09 (applying the maxim *inclusio unius est exclusio alterius* in construing section 209 of the Act).

Third, the Fifth Circuit found it significant, as do I, that section 209(b)(5) of the Act requires an applicant for adjustment of status to establish admissibility, except as otherwise provided under section 209(c). The court likewise concluded that holding that a noncitizen whose asylee status has been terminated for specific conduct—including for an aggravated felony conviction like the one incurred by the respondent—is ineligible to apply for adjustment of status under section 209(b) of the Act, even though the same conduct may be waived for admissibility purposes, would defeat Congress' purpose of creating a discretionary mechanism to allow otherwise removable noncitizens to remain in the United States when doing so would be in the public interest. *See Siwe*, 742 F.3d at 609.[5]

In conclusion, applying traditional tools of statutory construction, I would hold that the Act unambiguously provides that a noncitizen who has been granted asylum and not previously adjusted to lawful permanent resident status under section 209(b) of the Act may apply for adjustment of status

[5] The Department of Homeland Security ("DHS") does not persuasively argue that the Fifth Circuit confused a noncitizen's statutory ineligibility for adjustment of status under section 209(b) of the Act due to termination of asylee status with the availability of section 209(c) to waive certain grounds of inadmissibility. A conviction for an aggravated felony is not a ground of inadmissibility. *See* section 212(a) of the Act. Further, the DHS's logic would require concluding that a noncitizen is ineligible for adjustment of status pursuant to section 245(a) of the Act, 8 U.S.C. § 1255(a) (2018), for an aggravated felony conviction before adjudicating the noncitizen's application for a section 212(h) waiver, even though it is common practice to consider both applications concurrently.

under section 209(b), even if the noncitizen's asylee status has been terminated. A review of the overall context of section 209 of the Act, as well as its implementing regulations, supports this reading of the statute.

II. CONSISTENCY WITH PRIOR CASE LAW

I further conclude that prior case law concerning the availability of adjustment of status under section 209(b) does not contravene my interpretation of the Act. In *Matter of C-J-H-*, 26 I&N Dec. 284, 285–87 (BIA 2014), the Board held that a noncitizen who adjusted from asylee status to lawful permanent resident status under section 209(b) of the Act cannot later readjust under that section. The Board later clarified that a noncitizen who adjusts status pursuant to section 209(b) of the Act changes status from that of a noncitizen granted asylum to that of a noncitizen lawfully admitted for permanent residence, thereby terminating the noncitizen's asylee status and rendering inapplicable the restrictions on removal in section 208(c)(1)(A) of the Act. *Matter of N-A-I-*, 27 I&N Dec. 72, 75 (BIA 2017). By explicitly using the terminology "alien granted asylum," the Board acknowledged the noncitizen's status was that of a noncitizen granted asylum. *Id.* The Fourth Circuit has also held that a noncitizen who adjusts to lawful permanent resident status under section 209(b) of the Act loses asylee protections, and therefore need not be subject to termination of asylee status pursuant to section 208(c)(2) before being removed. *Mahmood*, 849 F.3d at 191–93. These cases are distinguishable because they involved noncitizens whose asylee status was terminated by their adjustment of status under section 209(b) of the Act. My dissent does not contravene these cases but follows them.

The instant case does not involve a situation in which a noncitizen who adjusted to lawful permanent resident status under section 209(b) becomes removable and is ineligible to readjust and seek a section 209(c) waiver because the adjustment changed his status from that of an "alien granted asylum" to that of "an alien lawfully admitted for permanent residence." Rather, we are presented with a different scenario in which the respondent has not yet adjusted to lawful permanent resident status, so there has been no change to his status of being an "alien granted asylum." *Matter of C-J-H-*, *Matter of N-A-I-*, and *Mahmood* are distinguishable, as a noncitizen whose asylee status has been terminated under section 208(c)(2) of the Act is not in the same position as an asylee who applied for and adjusted to lawful permanent resident status pursuant to section 209(b) of the Act. Along these lines, the Fourth Circuit stated that it is incorrect to equate a noncitizen's "*voluntary surrender* of his asylum status through his adjustment under [section 209(b)] with the *involuntary loss* of his asylum status through the Attorney General's termination of it under [section 208(c)]." *Id.* at 192.

Section 208 of the Act protects asylees from having their asylee status terminated against their will by the Attorney General, except for the reasons provided in that section; in contrast, section 209 of the Act permits asylees "to voluntarily give up [their] asylum status in favor of the status of a lawful permanent resident." *Id*. The court therefore concluded that section 208(c) of the Act does not limit section 209(b). *Id.*; *see also Matter of N-A-I-*, 27 I&N Dec. at 76–77 (discussing the holding in *Mahmood*). The Fourth Circuit's reasoning reinforces my conclusion that noncitizens who have not yet adjusted to lawful permanent resident status under section 209(b) of the Act may apply for adjustment of status under that section, even after termination of their asylee status.

I also discern nothing in my statutory interpretation conflicting with *Matter of K-A-*, 23 I&N Dec. 661 (BIA 2004), and *Matter of V-X-*, 26 I&N Dec. 147 (BIA 2013). In the first case, we held that an Immigration Judge has discretion to defer ruling on the issue of termination of asylee status under 8 C.F.R. § 1208.24(f) (2021) if a noncitizen is eligible for some form of relief that would make termination of asylee status moot. *Matter of K-A-*, 23 I&N Dec. at 665–66. Although this holding arguably presumed that termination of asylee status would render the noncitizen ineligible for adjustment of status under section 209(b) of the Act, it is illogical to defer termination and consider adjustment if the noncitizen would become ineligible due to termination. The Board therefore reasonably concluded in a subsequent case that an Immigration Judge should ordinarily make a threshold determination regarding termination of asylee status before resolving the questions of removability and eligibility for relief. *Matter of V-X-*, 26 I&N Dec. at 149. Because these cases address the sequencing of consideration of applications for adjustment of status pursuant to section 209(b) and a section 209(c) waiver by Immigration Judges, they do not speak to the issue of statutory construction raised in this matter.

III. CONCLUSION

Based on the unambiguous and controlling language "any alien granted asylum" in section 209(b) of the Act, I would hold that an asylee who has not previously adjusted to lawful permanent resident status pursuant to section 209(b) may apply for adjustment of status under that section even after termination of asylee status, provided that the noncitizen continues to be a refugee or the spouse or child of a refugee. A review of the overall context of section 209(b) of the Act, the governing regulations, and relevant case law

supports this reading of the statute. I would therefore remand to permit the respondent to apply for adjustment of status pursuant to section 209(b).[6]

[6] On remand, the respondent would bear the burden of establishing that adjustment of status under section 209(b) of the Act and a section 209(c) waiver should be granted to him in the exercise of discretion. *See Matter of K-A-*, 23 I&N Dec. at 666 (noting that relief under sections 209(b) and (c) of the Act is discretionary); 8 C.F.R. § 1240.8(d) (2021) ("The respondent shall have the burden of establishing that he or she is eligible for any requested benefit or privilege and that it should be granted in the exercise of discretion."); *see also Matter of Jean*, 23 I&N Dec. 373, 382–84 (A.G. 2002) (discussing discretionary factors applicable to applications for a section 209(c) waiver). Thus, my interpretation of the Act would not necessarily permit noncitizens convicted of aggravated felonies and crimes involving moral turpitude to obtain relief under section 209(b) of the Act that would otherwise have been unavailable to them.