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BOARD OF IMMIGRATION APPEALS ALLOWS IMMIGRATION JUDGES TO DISREGARD PARTY STIPULATIONS

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The Board of Immigration Appeals in *Matter of J-H-M-H* held on October 7, 2025 that even if the parties in a case - the noncitizen respondent and the government - have stipulated to certain aspects of the case, Immigration Judges exercise independent judgment and are not required to accept party stipulations. In this case, the respondent and the DHS submitted a joint memorandum in October 2023 before the Immigration Judge stipulating that the respondent identified as a transgender woman, that the testimony would be consistent with the written materials submitted, and that the respondent was eligible for deferral of removal under the regulations implementing the Convention Against Torture. The IJ rejected the stipulation and set the case for hearing to take testimony. The respondent did not testify in support of the claim and sought to rely on the contents of the application, the personal statement and the stipulation. The IJ denied relief under CAT.

In their appeal, the respondent relied on the Board's 1989 decision in *Matter of Fefe*, which held that at a minimum an asylum applicant take the stand, be placed under oath and be questioned whether the information in the written application is complete, and that the examination of the respondent will be brief only where the parties have stipulated that the applicant's oral testimony would be consistent with their written application and be believably presented. The Board, however, held that *Matter of Fefe* is no longer binding preceded as it predated the enactment of INA 240(b)(4)(B) in 1996. This provision allows noncitizens to examine evidence against them, present evidence on their own behalf and to cross-examine witnesses. Yet, the Board recently held in September 2025 in *Matter of H-A-A-V-* that an IJ may pretermit an asylum

application without a full evidentiary hearing on the merits of the claim and also held that *Matter of Fefe* is no longer binding precedent. It is paradoxical that the Board affirmed an IJ's insistence to hold a hearing despite a joint stipulation in *Matter of J-H-M-H-* but affirmed an IJ's ability to pretermit an asylum application in *Matter of H-A-A-V-* without a full evidentiary hearing on the merits of the claim.

What does this case mean for future cases? We often stipulate with the DHS attorney on various aspects of the case. For example, there could be a stipulation on the bona fides of the marriage in a review of the I-751 petition in immigration court. The parties may stipulate that allegations made by a foreign government through an Interpol Red Notice against the respondent have no basis and should not be considered when adjudicating an asylum or adjustment application. Stipulations indeed encourage efficiency and allow the parties to focus on the essential aspect of the case. Under the Trump administration, an IJ may not want to go along with a stipulation out of fear that he or she may get fired. Or a newly appointed military judge inexperienced in immigration law who may not be favorably inclined to grant relief or benefits may want to override a stipulation.

Stipulations are especially critical in protecting vulnerable clients with mental competency issues. They could include both children and adults with diminished capacity. If they risk facing substantial harm, a joint stipulation where the parties can agree to the respondent's eligibility for asylum and related relief can serve as an adequate protective measure if the respondent may be unable to testify due to diminished capacity. A lawyer who represents a client with diminished capacity is required to seek protective action if the client will face harm under ABA Model Rul 1.14, and a stipulation would be one way to protect the client with diminished capacity.

The Board cited the regulation at 8 CFR 1003.10(b) to uphold the IJ disregarding the stipulation in *Matter of J-H-M-H*: "In deciding the individual cases before them…immigration 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 such cases." However, this regulation does not preclude a stipulation from being considered binding on the parties.

The BIA in *Matter of J-H-M-H* has unfortunately empowered IJs to disregard

stipulations, which in turn would undermine efficiency and result in more backlogs. If there is no case or controversy between the government and the respondent, the IJ ought not be playing any role. This decision promotes more inefficiency and backlogs in an already dysfunctional system. Immigration practitioners must be prepared to go through a full-fledged hearing even if there has been a stipulation in case an IJ insists on a full hearing. On the other hand, under *Matter of H-A-A-V-*, as IJ's have the power to pretermit asylum applications without a full evidentiary hearing, practitioners must submit comprehensive applications to ensure that the respondent can establish prima facie eligibility, and in the event of a pretermination, there is a sufficient basis in the record to appeal the decision.