

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-1848

AYMAN HESMAN MOHAMADY-ABDELGHAFAR,
Petitioner

v.

ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA

On Petition for Review of a Decision of the
Board of Immigration Appeals
(Agency No. 206-795-441)
Immigration Judge: Mary C. Lee

Submitted Under Third Circuit L.A.R. 34.1(a)
on February 5, 2026

Before: HARDIMAN, MONTGOMERY-REEVES, and ROTH, *Circuit Judges*

(Filed: August 24, 2026)

OPINION*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

ROTH, *Circuit Judge*.

Ayman Hesman Mohamady-Abdelghaffar, a citizen of Egypt, petitions for review of the Board of Immigration Appeals' (BIA) decision to deny his motions to remand and administratively close his removal proceedings. We deny his petition because the BIA did not abuse its discretion.

I.

In 2014, Mohamady-Abdelghaffar entered the United States without authorization via the southern border and claimed asylum. Although the asylum officer who interviewed Mohamady-Abdelghaffar found him to have a credible fear of persecution in Egypt, the Department of Homeland Security (DHS) placed him in removal proceedings under 8 U.S.C. § 1182(a)(7)(A)(i)(I) for inadmissibility.

Mohamady-Abdelghaffar initially conceded inadmissibility and filed an I-589 application for asylum, withholding of removal, and withholding under the Convention Against Torture. However, during the April 2019 merits hearing for the I-589 application, Mohamady-Abdelghaffar withdrew his application because his wife had filed an I-130 visa petition on his behalf, which permits U.S. citizens and lawful permanent residents to sponsor a foreign relative for a green card.¹ He instead agreed to accept an order of removal upon approval of his visa petition and thereafter pursue lawful admission to the United

¹ Mohamady-Abdelghaffar's wife was a lawful permanent resident at the time she filed the visa petition, and she became a U.S. citizen in 2021.

States.² In addition, DHS and Mohamady-Abdelghaffar agreed to continue the matter to April 2020 to allow for adjudication of Mohamady-Abdelghaffar's visa petition, with the expectation that the Immigration Judge (IJ) would issue a removal order at the next hearing.

U.S. Citizenship and Immigration Services approved Mohamady-Abdelghaffar's visa petition in June 2019. In December 2019, Mohamady-Abdelghaffar filed a motion to administratively close his proceedings because he received information that Immigration and Customs Enforcement (ICE) planned to detain him after he received his order of removal. The IJ denied Mohamady-Abdelghaffar's motion and entered an order of removal because, at the time, the Attorney General's binding decision in *Matter of Castro-Tum* restricted IJs' ability to administratively close proceedings.³ Mohamady-Abdelghaffar appealed to the BIA.

During the pendency of his appeal, the Attorney General in *Matter of Cruz-Valdez* overruled *Matter of Castro-Tum* and reinstated the IJs' power to administratively close removal proceedings in certain circumstances.⁴ Based on that change, Mohamady-Abdelghaffar filed a motion to remand and a motion for the BIA itself to administratively close proceedings. DHS did not respond to either of those motions. The BIA affirmed the IJ's denial of administrative closure for properly following *Matter of Castro-Tum*, the

² Mohamady-Abdelghaffar was subject to the ten-year period of inadmissibility under 8 U.S.C. § 1182(a)(9)(B)(i)(II) because he was unlawfully present in the United States for more than a year. Accordingly, in order to be lawfully admitted to the country, Mohamady-Abdelghaffar would have had to file (1) an I-212 to request permission to reapply for admission to the United States and (2) an I-601A to obtain a provisional waiver of inadmissibility.

³ 27 I. & N. Dec. 271 (A.G. 2018).

⁴ 28 I. & N. Dec. 326 (A.G. 2021).

binding precedent at that time. The BIA denied the motion to remand and motion to administratively close proceedings because it rejected Mohamady-Abdelghaffar's assertion that the motions were unopposed by DHS, and because it found that the totality of the circumstances weighed against granting the motions. Mohamady-Abdelghaffar then filed this petition for review.

II.⁵

Mohamady-Abdelghaffar advances two arguments in support of his contention that the BIA abused its discretion when it denied his motions. *First*, Mohamady-Abdelghaffar argues the BIA should have granted his motions because they were unopposed by DHS. *Second*, Mohamady-Abdelghaffar asserts that even if DHS opposed his requested motions, the totality of the circumstances weigh in favor of granting them. Mohamady-Abdelghaffar's arguments are unavailing for the following reasons.

Mohamady-Abdelghaffar insists the BIA should have deemed his motions unopposed and granted them because DHS never filed responses to his motions. Although 8 C.F.R. § 1003.1(l)(3) requires the BIA to grant a party's motion to administratively close proceedings when "the other party has affirmatively indicated its non-opposition," DHS's failure to file responding motions is not an *affirmative* representation of non-opposition. DHS did not take any action whatsoever—it did not file a joint motion with Mohamady-Abdelghaffar, nor did it file a separate position statement indicating its non-opposition. We cannot infer DHS's position from its failure to respond because mere silence is not an

⁵ The BIA had jurisdiction under 8 C.F.R. §§ 1003.1(b)(3), 1003.2(c)(4), and 1003.1(l). We have jurisdiction under 8 U.S.C. § 1252(a)(1).

affirmative act. In addition, although Mohamady-Abdelghaffar's motions referenced emails from DHS indicating its non-opposition, statements of counsel in a motion are not evidence and cannot be treated as an affirmative representation of non-opposition.⁶ Consequently, the BIA did not abuse its discretion when it declined to find Mohamady-Abdelghaffar's motions unopposed.

Next, the BIA acted within its discretion when it found that the totality of the circumstances did not favor granting Mohamady-Abdelghaffar's motions. 8 C.F.R. § 1003.1(l)(3)(i) provides the following non-exhaustive list of factors for the BIA to consider when determining whether to administratively close a case:

- (A) The reason administrative closure is sought;
- (B) The basis for any opposition to administrative closure;
- (C) Any requirement that a case be administratively closed in order for a petition, application, or other action to be filed with, or granted by, DHS;
- (D) The likelihood the alien will succeed on any petition, application, or other action that the alien is pursuing, or that the alien states in writing or on the record at a hearing that they plan to pursue, outside of proceedings before the [BIA];
- (E) The anticipated duration of the administrative closure;
- (F) The responsibility of either party, if any, in contributing to any current or anticipated delay;
- (G) The ultimate anticipated outcome of the case pending before the [BIA];
- and
- (H) The ICE detention status of the alien.

The regulation states that “[n]o single factor is dispositive,” and the BIA may consider “as many of the factors . . . as are relevant to the particular case.”⁷ Our Circuit has held that the BIA “need

⁶ See *Matter of Ramirez-Sanchez*, 17 I. & N. Dec. 503, 506 (BIA 1980).

⁷ 8 C.F.R. § 1003.1(l)(3).

not evaluate every factor in detail” and acts within its discretion so long as it weighs the relevant factors.⁸

The BIA satisfied that requirement here. The BIA noted that entry of a removal order would not preclude Mohamady-Abdelghaffar “from pursuing or [obtaining] a provisional unlawful presence waiver,” thereby undermining the stated justification for administrative closure and demonstrating that such closure is not a prerequisite for filing or obtaining relief from DHS.⁹ Moreover, the BIA weighed “[t]he anticipated duration of the administrative closure” factor against Mohamady-Abdelghaffar’s request because he provided no information regarding its expected length.¹⁰ Finally, although Mohamady-Abdelghaffar challenges the BIA’s denial of remand to the IJ to consider administrative closure, we discern no abuse of discretion because the BIA’s and IJ’s standards for administrative closure are identical, and the BIA permissibly denied administrative closure in the first instance.¹¹

III.

For the foregoing reasons, we deny the petition.

⁸ *Inestroza-Tosta v. Att’y Gen.*, 105 F.4th 499, 517 (3d Cir. 2024) (abrogated on other grounds by *Riley v. Bondi*, 606 U.S. 259, 267–73 (2025)).

⁹ AR 4.

¹⁰ *Id.*

¹¹ Compare 8 C.F.R. § 1003.1(l), with *id.* § 1003.18(c).