

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-1026

SHAKER ULLAH,

Petitioner,

v.

MERRICK B. GARLAND, Attorney General,

Respondent.

O R D E R

The Attorney General requests that we amend our opinion issued on July 6, 2023, in which we granted Shaker Ullah’s petition for review, reversed the agency’s denial of asylum and withholding of removal, and remanded with instructions to grant Ullah’s application. The Attorney General asserts that the Immigration and Nationality Act and implementing regulations require that the Attorney General make a discretionary judgment as to whether asylum should be granted, even where a noncitizen has met the statutory requirements. We construe

the Attorney General's motion as a petition for panel rehearing, *see* Fed. R. App. P. 40(a), and grant relief.

We agree that the power to grant asylum is vested solely in the hands of the Attorney General, 8 U.S.C. § 1158(b)(1), and that even if a noncitizen is otherwise eligible, the Attorney General is empowered by statute to deny relief, *id.*; *INS v. Cardoza-Fonseca*, 480 U.S. 421, 428 n.5 (1987); *Mejia v. Sessions*, 866 F.3d 573, 578 (4th Cir. 2017). We have considered Ullah's arguments in opposition to the Attorney General's motion and conclude that they lack merit. While discretionary denials of asylum are exceedingly rare, *Zuh v. Mukasey*, 547 F.3d 504, 507 (4th Cir. 2008), Ullah's claim that there are no grounds to deny asylum as a matter of discretion must first be considered by the Attorney General or his designee. Because the decision to grant asylum is for the Attorney General to make in the first instance, we GRANT the petition for panel rehearing and modify our opinion to the extent that we remand the case to the Attorney General for further proceedings consistent with that opinion.*

* The Attorney General does not request that we amend that part of our opinion directing that Ullah be granted withholding of removal. And we would deny such a request if he had done so. *See Mejia*, 866 F.3d at 578-79 (noting that if a noncitizen establishes his claim for withholding of removal, he cannot be removed to his native country).

Entered at the direction of the panel: Chief Judge Diaz, Judge Gregory, and
Judge Thacker.

For the Court

/s/ Nwamaka Anowi, Clerk