U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Dzubow, Jason Alexander
Dzubow & Pilcher, PLLC
1900 L Street, N.W.
Suite 305
Washington, DC 20036

DHS/ICE Office of Chief Counsel - MEM
80 Monroe Ave., Ste 502
Memphis, TN 38102

Name: U[redacted], L[redacted] K[redacted] **A[redacted]-003**
Riders:[redacted]

Date of this notice: 6/16/2017

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Cynthia L. Crosby
Deputy Chief Clerk

Enclosure

Panel Members:
Wendtland, Linda S.
Pauley, Roger
Cole, Patricia A.

schwarzA
Userteam: Docket

Files: A[redacted]003 – Memphis, TN
A[redacted]
A[redacted]

Date: JUN 16 2017

In re: L[redacted] K[redacted] U[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Jason Alexander Dzubow, Esquire

ON BEHALF OF DHS: Jonathan M. Larcomb
Assistant Chief Counsel

APPLICATION: Asylum

The respondents are a family. The mother is a native and citizen of Rwanda. Her two sons are natives of Uganda and citizens of Rwanda. The mother is the lead respondent (hereinafter, the respondent). In a decision dated January 4, 2013, the Immigration Judge found that the respondent lacked credibility and that she was not eligible for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158, because she was firmly resettled in South Africa. The Immigration Judge also granted withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3), as well as protection under the Convention Against Torture (CAT), 8 C.F.R. § 1208.16(c), with regard to Rwanda. The Immigration Judge also denied withholding of removal and protection under the CAT with regard to South Africa.

The respondent appealed. During the pendency of the appeal, the respondent's husband was killed in South Africa, and the respondent filed an unopposed motion to remand. On March 27, 2014, the Board remanded the record. On remand and in a decision dated February 4, 2016, the Immigration Judge denied asylum, again because the respondent was found to be firmly resettled in South Africa, but he nevertheless granted withholding of removal as to South Africa, while denying protection under the CAT as to that country. The respondent appeals from the Immigration Judge's February 4, 2016, decision. The appeal will be sustained.

The respondent's husband, a prominent Rwandan opposition figure, was assassinated in South Africa on January 1, 2014, and the evidence supports the claim that the Rwandan government was responsible for the murder. We note that evidence about treatment of similarly situated family members in the country of removal is probative of a threat of future persecution to the respondent. *See Ananeh-Firempong v. INS*, 766 F.2d 621, 627 (1st Cir. 1985). On appeal, the respondent continues to contend that the Immigration Judge erred in finding that she was firmly resettled in South Africa. The respondent also contends that her firm resettlement, which may bar her from asylum in relation to Rwanda, does not bar her from a grant of asylum regarding South Africa. The respondent contends that the Immigration Judge did not explain why the respondent was

ineligible for asylum from South Africa, given that the respondent met the higher burden necessary for a grant of withholding of removal to South Africa.

We agree with the respondent's argument to the extent it posits that an alien who faces persecution in the country of alleged firm resettlement can qualify for asylum. Initially, however, we note our disagreement with the respondent's assertion of eligibility for asylum "from" South Africa. Under section 208(b)(1)(A) of the Act, asylum is available only to a "refugee," and that term in turn is defined as a person who has suffered past persecution or has a well-founded fear of persecution on account of an enumerated ground with regard to his or her country of *nationality* (with other countries being pertinent only where the person has no nationality). *See* section 101(a)(42)(A) of the Act, 8 U.S.C. § 1101(a)(42)(A). In this case, since the respondent is a citizen of Rwanda, she can obtain asylum only upon a showing of cognizable past or feared persecution in *that* country.

Since the respondent has already been found to have established not only a well-founded fear but a clear probability of persecution with regard to Rwanda, the question becomes whether her status in South Africa – as to which she also fears persecution – nevertheless precludes her well-founded fear as to Rwanda from culminating in a grant of asylum. We conclude that it does not. The intent of the firm resettlement bar is to disqualify asylum applicants who have previously found another country of *refuge*, not another country in which he or she faces a danger of persecution. *See generally Matter of A-G-G-*, 25 I&N Dec. 486, 492 (BIA 2011) (noting, in discussing history of firm resettlement concept, that Supreme Court had "concluded that Congress did not intend to provide refugee protection to aliens who had already found *shelter* and begun new lives in other countries.") (emphasis added) (citing *Rosenberg v. Yee Chien Woo*, 402 U.S. 49, 56 (1971)).

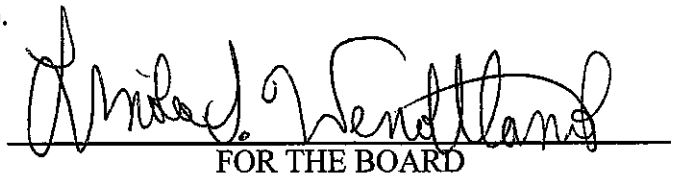
Given the respondent's situation with regard to South Africa, we conclude that, even assuming she otherwise would be viewed as having firmly resettled in that country, she is not barred from asylum. On remand, the Immigration Judge concluded that based on the new evidence regarding the respondent's husband's death, it is more likely than not that the respondent will be persecuted in South Africa (I.J. at 9). The Immigration Judge granted the respondent's application for withholding of removal to South Africa, and the Department of Homeland Security (DHS) has not meaningfully disputed the Immigration Judge's determination that the respondent faces a clear probability of persecution in that country. Yet the Immigration Judge denied the respondent's application for asylum, ostensibly because she was firmly resettled in South Africa. Firm resettlement, however, is not a bar to asylum when the country in which resettlement allegedly occurred is also a country in which the respondent faces persecution (Respondent's Brief at 14). And again, in view of the undisputed grant of withholding of removal to Rwanda (the country of nationality), the respondent has satisfied her burden of proving that she has a well-founded fear of future persecution in that country on account of a political opinion imputed to her. Consequently, the respondent qualifies for asylum.

Finally, although the DHS has argued that the respondent provided evasive, nonresponsive and inconsistent testimony (while not challenging the ultimate grant of withholding of removal), we conclude that any such concerns are not sufficiently egregious to warrant a denial of asylum in the exercise of discretion. *See Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987).

As we conclude that the respondent has established eligibility for and worthiness of asylum relief, the respondent's appeal will be sustained.

ORDER: The appeal is sustained.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).



FOR THE BOARD