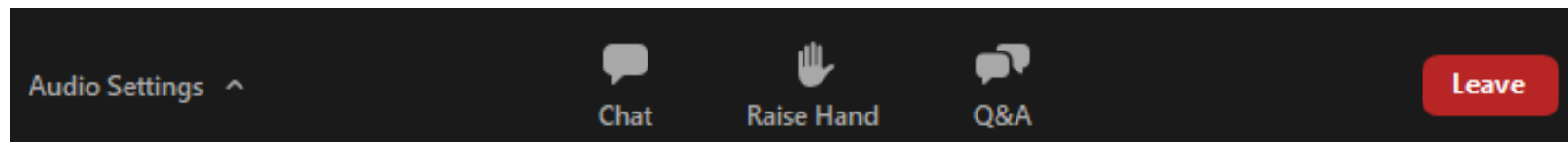


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Q&A: We encourage attendees to submit non-case-specific questions throughout the webinar. Please click on the Q&A box, *not* Chat, in your toolbar to open the Q&A box. Type your question into the Q&A box and click “Send”. Panelists may answer relevant questions in the Q&A box or out loud. While we endeavor to answer as many questions as possible, we may not be able to answer all questions.

Chat: The Chat box located on the tool bar may be used to communicate directly with the host/panelists if you encounter problems with the sound quality, viewing of PowerPoint presentations, or other logistics questions. **Do not use the Chat box to ask substantive questions. Use the Q&A box instead.** Participants may use the Chat box to participate where instructed by the panelists.



Firm Resettlement Issues in Asylum Claims

Sayoni Maitra, Senior Staff Attorney

Christine Lin, Director of Training &
Technical Assistance

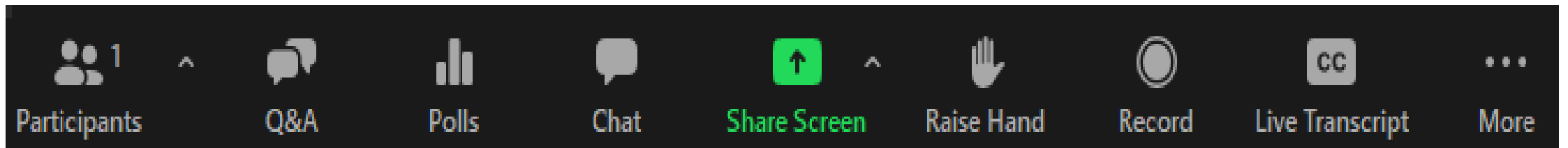
October 20, 2022



Chat vs. Q&A Box

Chat: Participants may use the Chat box to participate when prompted.

Q&A: We encourage attendees to submit questions throughout the webinar using the Q&A box. Click on the Q&A box to open the window, type your question, and click “Send”.



Poll #1: Attendee Background

1. How many asylum cases have you handled?

- a. 0
- b. 1-2
- c. 3-5
- d. 6-9
- e. 10+

2. Have you worked on any cases implicating the firm resettlement bar?

- a. Yes
- b. No



CGRS

Overview

- Firm Resettlement Framework
- Government's Burden: Evidence of Offer
- Applicant's Burden: Rebutting Evidence of Offer
- Applicant's Burden: Establishing an Exception
- CGRS Resources

Firm Resettlement Framework

Firm Resettlement Bar

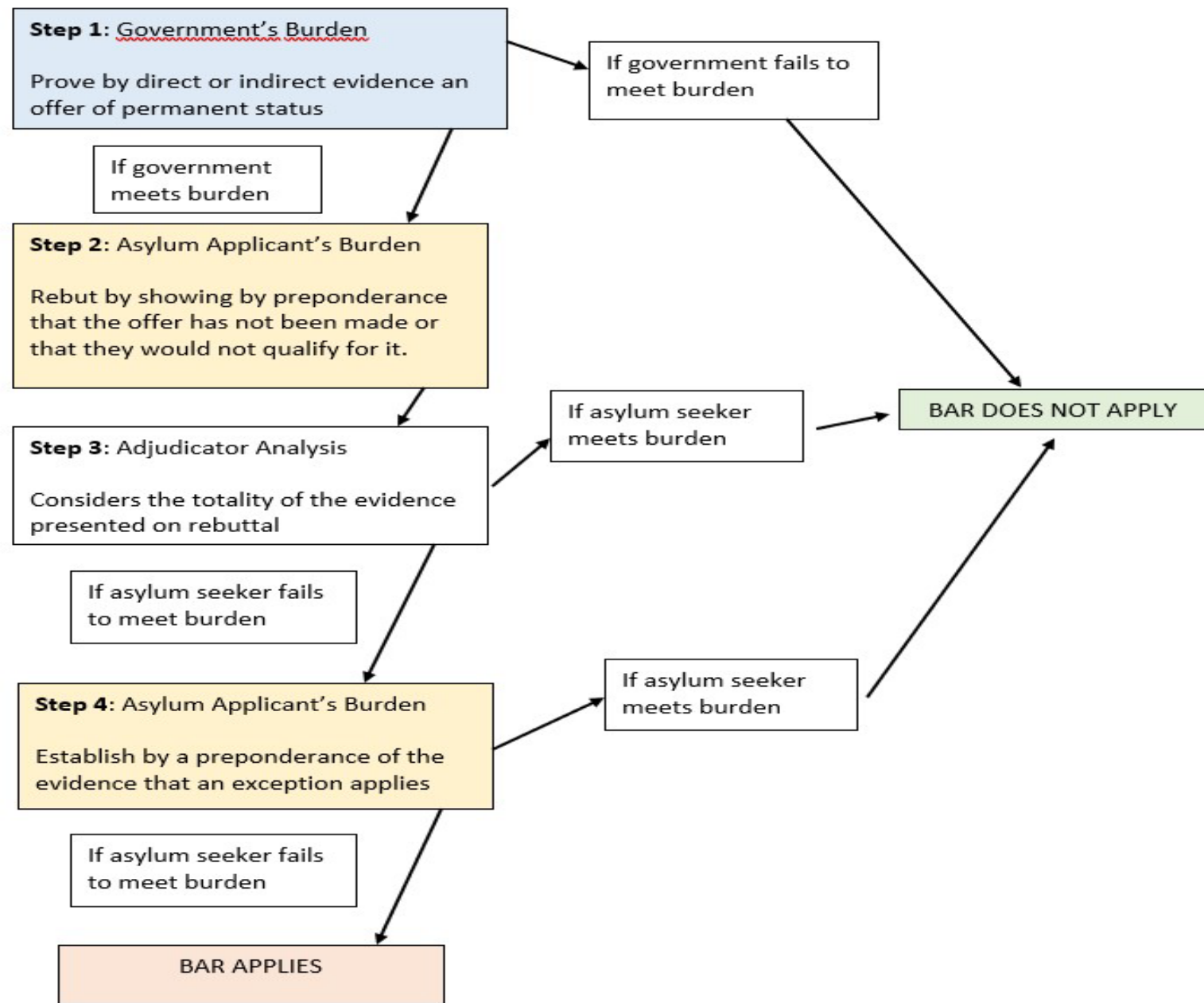
- Barred from asylum if applicant was “firmly resettled in another country prior to arriving in the United States”
- Statutory authority: 8 U.S.C. § 1158(b)(2)(A)(vi)
- Relevant regulations: 8 C.F.R. §§ 208.15, 1208.15
- Not a bar to withholding of removal or protection under the Convention Against Torture

What is Firm Resettlement?

1. Entry into a third country
2. Offer or receipt of
3. Permanent status

An individual is “considered to be firmly resettled if, **prior to arrival in the United States**, [they] entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement unless [they] establish[an exception].” [8 C.F.R. § 1208.15](#) (2000) (emphasis added)

Burden of Proof: BIA Four-Step Framework



Government's Burden: Evidence of Offer

Poll 2: Evidence

1. Which of the following could constitute **direct evidence** of an offer of permanent resettlement? You may select more than one.
 - A. Work authorization
 - B. Permanent residence permit
 - C. Receipt of government benefits
 - D. Grant of asylum/refugee status
 - E. Applicant's own testimony that they received offer
 - F. Expired passport/travel document
 - G. Valid passport/travel document about to expire in 6 months
 - H. Right to travel, including to exit and reenter country

Poll 2: Evidence (continued)

2. Which of the following could constitute **indirect evidence** of an offer of permanent resettlement? You may select more than one.
- A. Immigration laws
 - B. Length of stay
 - C. Intent to settle
 - D. Familial ties
 - E. Property ownership
 - F. Business or socio-economic connections
 - G. Education opportunities
 - H. Access to permanent housing

How Important is Direct Evidence?

Direct Offer Approach

- Must show direct evidence is unavailable or unobtainable to rely on indirect evidence
- Indirect evidence must speak to *formal* offer of status; length of stay insufficient
- Followed by BIA in *Matter of A-G-G-* and adopted by most circuits

Totality of Circumstances Approach

- Direct evidence and indirect evidence given equal weight
- Offer of firm resettlement may come in forms other than a formal offer of status
- Adopted by Second and Fourth Circuits pre-*A-G-G-*; no published decision reconsidering approach

Applicant's Burden: Rebutting Evidence of Offer

Bar May Be Triggered Even if:

- The individual did not accept offer (e.g., apply for status)
- The individual did not finish application process where only “ministerial”/administrative steps remain
- Status lapsed
- The individual no longer allowed to enter third country
- Status was fraudulently obtained where documentation is facially valid

Potential Arguments

- In general:
 - Firm resettlement is a fact and record-specific inquiry
 - Government failed to show significance of status under the third country's immigration laws
- If the individual did not apply/complete the application process or if the application is pending:
 - Process is burdensome and not merely “ministerial”
 - Approval is discretionary
 - Approval is otherwise not certain

Poll 3: Rebutting Receipt of Status

If DHS presents evidence that the individual received a form of status in the third country, which of the following arguments could be a viable rebuttal? You may select more than one.

- A. The individual's fear of persecution in their country of origin arose after they left the third country
- B. The status is temporary without opportunity to renew
- C. The status is renewable but will not transform into permanent offer
- D. The individual did not renew, and therefore abandoned, their status
- E. The status was fraudulently obtained and the individual was apprehended when they tried to use it to apply for government benefits

Judith's Case

- Judith fled persecution in Haiti and traveled to Brazil to earn enough money to travel onward to the US.
- She lived in a refugee camp in Brazil, where others told her she would receive a renewable “provisional protocol” document and a temporary work permit if she filed an asylum application.
- She stayed in Brazil for five years but struggled to find stable work or housing.
- Before leaving Brazil, she learned that her name was included in a “registry” of Haitian nationals who could apply for permanent residence.
- She did not look into the process because she heard it would take time and cost a lot of money.
- She also did not want to stay in Brazil due to discrimination and violence against Black migrants, especially Haitians.

Poll 4: Judith's Case

If DHS presents evidence of an offer, which arguments can Judith's advocate make to rebut application of the firm resettlement bar? You may select more than one.

- A. Judith never accepted an offer of permanent residence
- B. The application process for permanent residence has onerous requirements
- C. Judith would not be allowed to return to Brazil
- D. Judith has no family or socio-economic ties to Brazil
- E. There is no guarantee Judith would receive permanent residence even if she applied

Applicant's Burden: Establishing an Exception

Applicant Exempt from Firm Resettlement Bar if They Show:

1. **Entry into third country incident to flight:** 8 C.F.R. § 1208.15(a)

- “necessary consequence” of “flight from persecution,”
- “remained in that country only as long as was necessary to arrange onward travel, and”
- “did not establish significant ties in that country”

OR

2. **Restrictive conditions in third country:** Living conditions (1) “substantially,” (2) “consciously,” restricted (3) “by the authority of the country” that the applicant was not resettled

Purpose of “No Significant Ties” Exception

- “[M]any refugees make their escape to freedom from persecution in successive stages and come to this country only after **stops along the way**. Such stops do not necessarily mean that the refugee’s aim to reach these shores has in any sense been abandoned”
Rosenberg v. Yee Chien Woo, 402 U.S. 49, 57 n.6 (1971).
- Bar should not preclude asylum solely because “a person has come to **rest at a country** other than the country of danger” *Cheo v. INS*, 162 F.3d 1227, 1230 (9th Cir. 1998)

Factors Relevant to “No Significant Ties” Exception

Lack of:

- Right to work and travel
- Stable employment
- Stable housing
- Right to attend school
- Knowledge of language
- Family ties
- Property/business ties
- Eligibility for government benefits

Factors Relevant to “Restrictive Conditions” Exception

8 C.F.R. §§ 208.15(b), 1208.15(b):

- Conditions under which other residents of the country live
- Housing – type (temporary or permanent) made available?
- Employment – type, extent, availability?
- Permission to enjoy other rights and privileges ordinarily available to other residents, such as:
 - Property
 - Travel documentation that includes a right to entry or reentry
 - Education
 - Public relief
 - Naturalization

Additional Factors Relevant to “Restrictive Conditions” Exception

- Persecution by state *or* nonstate actors the government is unable or unwilling to control
 - *See Aden v. Wilkinson*, 989 F.3d 1073, 1080-81 (9th Cir. 2021)
- Widespread harassment and systematic discrimination even if less severe than persecution
 - *See, e.g., Jarbanda v. Barr*, 817 F. App’x 332, 335 (9th Cir. 2020); *Nanda Si v. Holder*, 375 F. App’x 126, 128-29 (2d Cir. 2010)

Judith's Case Revisited

- While in Brazil, Judith had a work permit.
- She struggled to find a job because of language barriers.
- Judith eventually found work in a store.
- At the store, she was paid significantly less than her Brazilian coworkers who called her racial slurs and threatened to harm her if she did not quit.
- Judith lived in a refugee camp and was unable to find housing until she switched jobs and worked as a live-in domestic worker.
- Judith's employer forced her to work long hours and did not allow her to leave the home without permission.
- Judith did not report her mistreatment to the Brazilian authorities because she heard they also discriminated against Black people, especially Haitian migrants.
- After staying in Brazil for 5 years, she saved up enough money to afford the trip to the US.

Poll 5: Judith's Case Revisited

Can Judith show an exception to the firm resettlement bar?
Select one.

- A. Yes, the “no significant ties” exception
- B. Yes, the “restrictive conditions” exception
- C. Yes, both exceptions
- D. No, neither exception

Evidence Showing Judith's Exception to Firm Resettlement Bar

- Applicant's declaration:
 - Described intent to stay in Brazil for short time, but ultimately wanted to get to US
 - Why delayed in getting to US
 - Violence faced in Brazil, lack of stable employment opportunities, disparity in wages
- Expert Declaration on Violence Against Black Women in Brazil
 - Historical, social and cultural underpinnings of racial and gender discrimination and violence against black women in Brazil
 - Disproportionately high rates of violence in Brazil and lack of government protection
 - Discrimination and violence against Haitians in the labor market and society
- Country condition reports describing restrictions on rights, employment opportunities, etc.

Juan's Case: Putting It All Together

- Juan, a Salvadoran asylum seeker, traveled through Guatemala and Mexico and reached the US-Mexico border in July 2019 to seek asylum in the US. He did not feel safe in Guatemala and therefore did not apply for asylum there.
- Because of the U.S. government's "metering" policy, Juan had to put his name on a "list" and wait in Mexico for many months before he could even speak with a U.S. official to request asylum. Although he initially lived in a shelter, he was eventually asked to leave due to capacity restraints and had to sleep in the streets.
- Worried he wouldn't be able to get asylum in the US, Juan submitted an asylum application with the Mexican authorities.
- When his "turn" on the metering list finally came in December 2019, DHS issued him an NTA and forced him to wait in Mexico under the so-called "Migrant Protection Protocols" (MPP) program until his immigration hearing date.
- Juan lived in constant fear of cartel violence in Mexico until March 2021 when he was finally processed into the US because the Biden administration had begun winding down the MPP program.
- His Mexican asylum application remains pending.

Juan's Case (continued)

At his immigration hearing, DHS submitted Juan's pending asylum application as evidence of an offer of permanent settlement.

1. How can Juan's advocate challenge the existence of an offer?
 - A. Juan was forced to stay in Mexico because of the U.S. government's unlawful metering and MPP policies
 - B. Juan lacked stable housing in Mexico
 - C. Juan was not granted asylum
 - D. Eligibility for asylum is a complex legal determination

Juan's Case (continued)

2. If the immigration judge finds an offer of permanent resettlement, can Juan establish an exception to the firm resettlement bar?
 - A. Yes, the “no significant ties” exception
 - B. Yes, the “restrictive conditions” exception
 - C. Yes, both exceptions
 - D. No, neither exception

CGRS Resources

CGRS Practice Advisories

Introduction to Asylum Law and Proceedings

CGRS Practice Advisory
July 2021



Center for Gender & Refugee Studies

Bars to Fear-of- Return Relief: Chapters I-IV

CGRS Practice Advisory
December 2021



Center for Gender & Refugee Studies

Case Compendium: Bars to Fear-of-Return Relief

CGRS Case Compendium
March 2022



Center for Gender & Refugee Studies

CGRS Country Conditions Resources for Advocates Working with Haitians Who Have Lived in Third Countries

- [Expert Declaration of João H. Costa Vargas – Violence and Discrimination Against Black Women in Brazil \(July 2021\)](#)
- [Country Conditions Memo: The Treatment of Haitian Migrants in Brazil \(August 2021\)](#)
- [Country Conditions Memo: The Treatment of Haitian Migrants in Chile \(August 2021\)](#)
- [Country Conditions Memo: The Treatment of Haitian Migrants in the Bahamas \(October 2021\)](#)

CGRS Country Conditions Resources for Advocates Working with Migrants Who Have Lived in Mexico/Colombia and Venezuelans in Peru

- [Country Conditions Documentation Toolkit for Violence Against Migrants in Mexico: Government Ineffectiveness and Legal Framework \(March 2020\)](#)
- [Country Conditions Documentation Toolkit for Violence Against Migrants in Mexico: Prevalence of Harm \(March 2020\)](#)
- [Country Conditions Resource List: Harm to Migrants in Colombia \(July 2022\)](#)
- [Country Conditions Resource List for Fear-of-Return Claims for Venezuelan Migrants in Peru \(February 2021\)](#)

Other Firm Resettlement Resources

- [U.S. Citizenship and Immigration Services, RAIO Directorate – Officer Training, Firm Resettlement Training Module \(Dec. 20, 2019\)](#)
- Resources Relevant to Migrants Who Lived in Mexico:
 - [CLINIC, Firm Resettlement Considerations in the Wake of the “Migrant Protection Protocols” Wind-Down \(July 29, 2021\)](#)
 - [Asylum Access, Mexican Asylum System for U.S. Immigration Lawyers FAQ \(Nov. 2019\)](#)

CGRS Technical Assistance Resources

Practice Advisories

- Domestic violence
- Children's asylum
- Fear-of-gang claims
- Gender-based claims
- CAT protection claims
- EAD Rule

Country Conditions Reports

- Specific topics in individual countries (e.g., children, indigenous, LGBTI, gang)

Unpublished Case Law

- IJ and BIA decisions

Expert Declarations

- Country-specific (e.g., violence against women, children, LGBTQ)
- Topic-specific (e.g., domestic violence, incest, trauma and memory)

Sample Pleadings

- Case documents: declarations, indices, expert affidavits
- Legal briefs

Access CGRS Technical Assistance

CGRS provides free expert consultation to attorneys and organizations representing asylum seekers, including legal technical assistance, strategy development, sample briefs, unpublished decisions, country conditions evidence, and expert witness affidavits.

Access assistance in your case: <http://cgrs.uchastings.edu/assistance>.

Email: CGRS-TA@uchastings.edu with your CGRS Case Number if you have follow-up questions.

Reach out to CGRS: cgrs-ABtracking@uchastings.edu to request CGRS's amicus support in a case involving *Matter of A-B-* before the BIA or courts of appeals.

Report Case Outcomes

Advocates can report case outcomes at: <https://cgrs.uchastings.edu/outcomes>

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> TECHNICAL ASSISTANCE FAQ

> FIND AN EXPERT WITNESS

> REPORT AN OUTCOME IN YOUR CASE

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- 1. Log in
- 2. Find the case in our system on [your account page](#).
- 3. On the case page, under the "Outcomes" tab, select "Add an outcome."
- 4. If you would like further assistance on this case (i.e. with an appeal), please also email CGRS-TA@uchastings.edu and include the case number in the subject line.

CGRS Expert Database

- Free, searchable repository of health, country conditions, and issue-specific professionals who serve as expert witnesses to support the legal claims of asylum seekers in the United States.
- Expert profiles with areas of expertise, availability, and CV.
- Advocates can sign into their CGRS accounts to search and contact experts: <https://cgrs.uchastings.edu/expert/search>.
- Experts who wish to be considered for inclusion in the database may create a profile at: <https://cgrs.uchastings.edu/register/expert-witness>.

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