

**BIA****Case:** *Matter of K-S-E-*, 27 I&N Dec. 818 (BIA 2020)**Date:** April 10, 2020**Board Panel:** Malphrus, Creppy, Gemoets**Opinion:** Gemoets**Tags:** Immigration, asylum, firm resettlement bar, Haiti, Brazil**Question(s) Presented:** Was Respondent subject to the mandatory bar for asylum because he was offered firm resettlement in Brazil, even though he walked away from the offer?**Holdings:** Appeal dismissed. The firm resettlement bar holds even if the host country's offer of resettlement is not accepted by the individual.**Rationale:** Brazil made the offer, and per our case law that's enough to qualify for the "firm resettlement" bar.**Facts:** Haitian citizen lived in Brazil prior to arriving in the US and seeking asylum. Brazilian government had offered him permanent residence, but he had not applied for this.**Attorneys' Arguments:**

- **DHS:** Here's the registry list for Haitians in Brazil, and here's the Brazilian government's description of a humanitarian program for permanent residence which was offered to Respondent.
- **Respondent:** It wasn't an *indefinite* offer of residence: it would expire after 5 years.
  - **DHS:** But it can be renewed.

**Appeals to Statute & Precedent:**

- **INA 208(b)(1)(A) [8 U.S.C. § 1158(b)(1)(A)]:** ineligibility for asylum if offered permanent residence in another country before coming to the U.S.
- ***Matter of D-X- & Y-Z-*, 25 I&N Dec. 664, 665 (BIA 2012):** Framework for determining cases involving firm resettlement as a mandatory bar to asylum.
- ***Matter of A-G-G-*, 25 I&N Dec. 486, 500-03 (BIA 2011):** Framework for determining cases involving firm resettlement as a mandatory bar to asylum.
- ***Maharaj v. Gonzales*, 450 F.3d 961, 977 (9<sup>th</sup> Cir. 2006):** Firm resettlement ban applies even if the offer has merely been made by the government and the application process for permanent residence is still pending.
- ***Camposeco-Montejo v. Ashcroft*, 384 F.3d 814, 818-20 (9<sup>th</sup> Cir. 2004):** Right to apply for permanent residence is distinct from right to renew a temporary permit for purposes of firm resettlement bar.
- ***Matter of Soleimani*, 20 I&N Dec. 99, 109 (BIA 1989):** foreign law must be proven by the party seeking to rely on it.

**Discussion:**

- “Permanent resettlement exists where there is an available offer that realistically permits an individual’s indefinite presence in the country.” *Matter of K-S-E-*, 27 I&N Dec. 818, 819 (BIA 2020).
- Firm resettlement cancels out eligibility to apply for asylum in the U.S.
- “The respondent was not prevented from accepting the Brazilian Government’s offer of permanent residence. Rather, he testified that he did not accept the offer because of the cost and time involved and his fear of local crime if he stayed in Brazil.” *Matter of K-S-E-*, 27 I&N Dec. 818, 820 (BIA 2020).
- **“For purposes of determining whether an alien is subject to the firm resettlement bar to asylum, a viable and available offer to apply for permanent residence in a country of refuge is not negated by the alien’s unwillingness or reluctance to satisfy the terms for acceptance.”** *Matter of K-S-E-*, 27 I&N Dec. 818, 821 (BIA 2020).
- **BIA** is also unimpressed with the argument that (in case the firm resettlement bar does not apply) Respondent experienced persecution in Haiti that the government was unable and unwilling to control.

**Commentary:**

- Four-step process for determining if Respondent meets firm resettlement bar:
  - (1) DHS has burden of presenting prima facie evidence of firm resettlement (e.g., govt docs, ID cards)
  - (2) Asylum applicant can rebut DHS’s evidence to argue that no offer was made or that he or she couldn’t qualify for it even if it were made.
  - (3) IJ must consider the totality of the evidence re. firm resettlement.
  - (4) Respondent must show any exception to firm resettlement.  
(See *Matter of A-G-G-* and *Matter of D-X & Y-Z*)