



# U.S. Citizenship and Immigration Services

## RAIO DIRECTORATE – OFFICER TRAINING

**RAIO Combined Training Course**

**FIRM RESETTLEMENT**

TRAINING MODULE

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RAIO Directorate – Officer Training / *RAIO Combined Training Course***FIRM RESETTLEMENT**

## Training Module

**MODULE DESCRIPTION:**

This module provides an overview of the firm resettlement bars for asylum and refugee resettlement. The module addresses the similarities and differences between these two bars and their exceptions. This module also includes an explanation of the BIA's four-step framework for analyzing evidence under the firm resettlement bar.

**TERMINAL PERFORMANCE OBJECTIVE(S)**

You (the officer) will be able to evaluate whether an asylum or refugee applicant is firmly resettled in a third country and articulate appropriate reasons supporting the firm resettlement determination.

**ENABLING PERFORMANCE OBJECTIVES**

1. Identify the three requirements of the asylum and refugee firm resettlement bars and their exceptions.
2. Distinguish between the exceptions to the firm resettlement bars for asylum and refugee adjudications.
3. Apply the firm resettlement bars to determine eligibility for asylum or refugee resettlement.

**INSTRUCTIONAL METHODS**

- Interactive Presentation
- Class Discussion
- Practical Exercises

**METHOD(S) OF EVALUATION**

- Multiple Choice Exam
- Observed Practical Exercises

## REQUIRED READING

1. [\*Matter of A-G-G-\*](#), 25 I&N Dec. 486 (BIA 2011).

### [Division-Specific Required Reading - Refugee Division](#)

### [Division-Specific Required Reading - Asylum Division](#)

### [Division-Specific Required Reading - International Operations Division](#)

## ADDITIONAL RESOURCES

### [Division-Specific Additional Resources - Refugee Division](#)

### [Division-Specific Additional Resources - Asylum Division](#)

### [Division-Specific Additional Resources - International Operations Division](#)

## Critical Tasks

Task/ Skill #	Task Description
ILR6	Knowledge of U.S. case law that impacts RAIO (3)
ILR17	Knowledge of who has the burden of proof (4)
ILR18	Knowledge of different standards of proof (4)
ILR23	Knowledge of bars to immigration benefits (4)
IRK4	Knowledge of policies, procedures and guidelines for requesting and accepting evidence (3)
RI1	Skill in identifying issues in a claim (4)
RI9	Skill in identifying inadmissibilities and bars(4)
DM2	Skill in applying legal, policy and procedural guidance (e.g., statutes, precedent decisions, case law) to information and evidence (5)
DM3	Skill in applying eligibility requirements to information and evidence (5)

## SCHEDULE OF REVISIONS

Date	Section (Number and	Brief Description of Changes	Made By

	<b>Name)</b>		

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Throughout this training module you will come across references to division-specific supplemental information located at the end of the module, as well as links to documents that contain division-specific, detailed information. You are responsible for knowing the information in the referenced material that pertains to your division. Officers in the International Operations Division who will be conducting refugee interviews are also responsible for knowing the information in the referenced material that pertains to the Refugee Affairs Division.

For easy reference, each division's supplements are color-coded: Refugee Affairs Division (RAD) in pink; Asylum Division (ASM) in yellow; and International Operations Division (IO) in purple.

## 1 INTRODUCTION

An applicant is barred from asylum and refugee resettlement to the United States if the applicant was firmly resettled in a third country.<sup>1</sup> The definitions of firm resettlement for asylum and refugee resettlement are similar, but differ in several ways. This module provides an historical overview of the firm resettlement provision, the statutory and regulatory authority for the bars, the elements of and exceptions to the firm resettlement bars, the burden of proof, and the BIA's four-step framework for analyzing firm resettlement in *Matter of A-G-G*.<sup>2</sup>

## 2 HISTORICAL OVERVIEW

Firm resettlement as a bar to protection has its origins in the 1946 Constitution of the International Refugee Organization which excluded from the refugee definition individuals who had acquired a new nationality or who had become "firmly established" in another country. Later, the bar is found in two clauses of the 1951 United Nations Convention relating to the Status of Refugees. The Refugee Convention states that the Convention ceases to apply to an individual who "has acquired a new nationality, and enjoys the protection of the country of his new nationality."<sup>3</sup> The Convention also excludes from protection an individual "who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country."<sup>4</sup>

<sup>1</sup> Refugee: INA § 207(c)(1); 8 C.F.R. § 207.1(b); Asylum: INA § 208(b)(2)(A); 8 C.F.R. 208.13(c), 208.15.

<sup>2</sup> *Matter of A-G-G*, 25 I. & N. Dec. 486 (BIA 2011).

<sup>3</sup> [United Nations Convention Relating to the Status of Refugees](#), art. 1C(3), adopted July 28, 1951, 189 U.N.T.S. 150 (entered into force April 22, 1954).

<sup>4</sup> [United Nations Convention Relating to the Status of Refugees](#), art. 1E.

The firm resettlement bar has been part of U.S. refugee law since the 1940s, beginning as a mandatory bar in the Displaced Persons Act of 1948. In a 1957 revision of the INA, the firm resettlement bar was dropped from the Act. Courts, however, continued to use firm resettlement as a negative discretionary factor. For example, § 203(a)(7) did not contain an explicit firm resettlement bar, but the Supreme Court held that it was a factor that could be considered in determining whether the applicant was seeking refugee status “as a consequence of his flight to avoid persecution.”<sup>5</sup>

The Refugee Act of 1980 made firm resettlement a statutory bar to refugee status, but not to asylum.<sup>6</sup> Interim regulations were issued soon after that made firm resettlement a bar in affirmative asylum cases. When the final asylum regulations were adopted in 1990, firm resettlement was made a bar to asylum in both affirmative and defensive cases. With the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Congress codified firm resettlement as a statutory bar to asylum.<sup>7</sup>

### 3 SOURCES OF AUTHORITY

The firm resettlement bars in refugee and asylum adjudications are similar in many aspects, but have somewhat different statutory and regulatory language. The side-by-side comparison below will assist you in applying the law according to the type of case you are adjudicating.

#### 3.1 Statutes

Both of these statutory provisions require that the firm resettlement have occurred prior to admission to or arrival in the United States.

<u>Refugee</u>	<u>Asylum</u>
INA § 207(c)(1) Admission by Attorney General of Refugees  “[T]he Attorney General may. . . admit any refugee who is not firmly resettled in any foreign country . . .”	INA § 208(b)(2)(A)(vi) Exceptions  An applicant is ineligible for asylum if the applicant “was firmly resettled in another country prior to arriving in the United States.”

#### 3.2 Regulatory Definitions

<sup>5</sup> [Rosenberg v. Yee Chien Woo](#), 402 U.S. 49, 56 (1971).

<sup>6</sup> [INA § 207\(c\)\(1\)](#).

<sup>7</sup> For a detailed history of the firm resettlement bar, see [Matter of A-G-G-](#), 25 I. & N. Dec. 486, 489-94 (BIA 2011).

Both the refugee and asylum definitions of firm resettlement in the regulations require entry into a third country (i.e., a country other than the United States and the applicant's country of nationality or last habitual residence, if stateless). A refugee applicant, however, must have entered the country *as a consequence of flight* for the bar to apply. The asylum firm resettlement bar does not have this requirement.

<u>Refugee</u>	<u>Asylum</u>
<p>8 C.F.R. § 207.1(b) Firmly Resettled</p> <p>A refugee is considered to be “firmly resettled” if he/she has been offered resident status, citizenship, or some other type of permanent resettlement by a country other than the United States and has travelled to and entered that country <b>as a consequence of his/her flight</b> from persecution. Any applicant who has become firmly resettled in a foreign country is not eligible for refugee status under this chapter.</p>	<p>8 C.F.R. § 208.15 Definition of Firm Resettlement</p> <p>An alien is considered to be firmly resettled if, prior to arrival in the United States, he or she 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.</p>

### *Example*

Applicant, a citizen of Country X, enters Country Z for business, and Country Z offers her permanent residency. For asylum purposes, Applicant is firmly resettled in Country Z if she entered into and received an offer of permanent residency there after becoming a refugee. For refugee purposes, she is not firmly resettled if she did not enter Country Z as a consequence of her flight from persecution from Country X. In this example, she entered Country Z for business purposes only.

Both definitions of firm resettlement require that the status offered or received must be permanent, not temporary.

### **3.3 Case Law**

Throughout its history, the firm resettlement bar has had many variations. Courts have applied it as a mandatory bar, as a discretionary bar, and as a bar to refugee resettlement only. Courts have also applied this bar prior to and after the issuance of the current regulations. Not surprisingly, courts have applied several different, and at times conflicting, approaches for determining if an individual had been firmly resettled. In May 2011, the BIA addressed these differences in a precedent decision called *Matter of*

*A-G-G-*.<sup>8</sup> In this decision, the BIA announced a new four-step framework for deciding firm resettlement cases that first focuses exclusively on the existence of an offer.<sup>9</sup> For this reason, you should not rely on case law issued prior to May 2011 that conflicts with the holding in *Matter of A-G-G-* and does not follow the BIA's new approach.

This BIA's new four-step framework is described in the Analysis section, below. In brief, the steps are as follows:

1. The officer bears the burden of presenting prima facie evidence of an offer of firm resettlement, relying on direct or, if direct is not available, indirect evidence.
2. If there is prima facie evidence, the applicant must be given the opportunity to rebut such evidence.
3. The officer must weigh the totality of the evidence and make a determination whether the evidence of an offer of firm resettlement has been rebutted.
4. If the officer finds the applicant was firmly resettled, the burden shifts to the applicant to establish an exception applies.

#### 4 THREE REQUIREMENTS OF FIRM RESETTLEMENT

As shown in comparison chart below, the asylum and refugee firm resettlement bars below have three common elements and one main difference. Both require entry into a third country, an offer or receipt of a status, and the status must be permanent (not temporary). The main difference is that the bar only applies to a refugee applicant if the entry into the third country was a consequence of flight from persecution.

In contrast, for an asylum applicant, the entry into the third country does not have to be as a consequence of flight from persecution. In the asylum context, the firm resettlement bar applies when, after becoming a refugee and prior to arriving in the United States, the applicant entered a third country with, or while in that country received, an offer of permanent resettlement.

<u>Refugee</u>	<u>Asylum</u>
1. Entry into a Third Country as a <b>Consequence of Flight</b> 2. Offer or Receipt of	1. Entry into a Third Country <b>Prior to Arriving in the United States</b> , (but only after events have occurred that would make the applicant a

<sup>8</sup> *Matter of A-G-G-*, 25 I&N Dec. 486 (BIA 2011).

<sup>9</sup> *A-G-G-*, 25 I&N Dec. at 501.

3. Permanent Status or Citizenship in Third Country	refugee)  2. Offer or Receipt of  3. Permanent Status or Citizenship in Third Country
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#### 4.1 Entry into a Third Country

The first requirement of both firm resettlement bars is that the applicants must have entered the third country. An offer or receipt of a permanent status alone, without a physical entry into the third country while that status is available, would not meet the first element of the firm resettlement bar.<sup>10</sup>

For the firm resettlement bar to apply, refugee applicants must have entered the third country as a consequence of flight.<sup>11</sup> When interviewing a refugee applicant, you should ask the refugee applicant why he or she entered the third country.

For asylum applicants, the bar applies if the applicant became a refugee and either entered the third country with the offer, or if after entry to the third country the refugee received the offer, any time prior to their arrival in the United States.<sup>12</sup> If you are interviewing an asylum applicant, there is no requirement under the firm resettlement bar that the applicant have entered the third country as a consequence of his or her flight from persecution.<sup>13</sup> The reason for entry into the third country is relevant, however, in determining whether the “no significant ties” exception applies. *See* Exceptions, below.

#### 4.2 Offer or Receipt

The offer or receipt of a permanent (not temporary) status, such as permanent residency or citizenship can be a more complex determination. As explained below in the section on Analysis, you should look for direct evidence of an offer or receipt of a status. The most probative form of direct evidence would be objective documentation indicative of the applicant’s ability to stay indefinitely in the third country. You may look to circumstantial (or indirect) evidence, but **only if** direct evidence is not available.<sup>14</sup>

#### *Example*

<sup>10</sup> 8 C.F.R. §§ [207.1\(b\)](#); [208.15](#).

<sup>11</sup> 8 C.F.R. § [207.1\(b\)](#).

<sup>12</sup> 8 C.F.R. § [208.15](#).

<sup>13</sup> For additional information, refer to *Elements of Firm Resettlement*, above.

<sup>14</sup> [Matter of A-G-G-](#), 25 I. & N. Dec. 486, 502 (BIA 2011).

Applicant credibly testifies to you that he fled persecution from Iraq, his country of citizenship, was granted refugee status by the Danish government and subsequently entered Denmark. Applicant presents you with a permanent residence permit issued to him by the Danish government. The residence permit is direct evidence of an offer of permanent resettlement or some type of permanent resettlement.<sup>15</sup>

### *Example*

Applicant credibly testifies to you that he fled persecution from Iraq, his country of citizenship, and moved to the Netherlands to reunite with his parents and other family members. Applicant has resided in the Netherlands for the past 7 years. He attended school and later worked as a translator there. He arrived in the United States through the assistance of a smuggler who kept his Iraqi passport and all other direct evidence of his status in the Netherlands. In this situation, you may rely on indirect evidence, such as length of stay and employment in determining whether this is evidence indicating an offer.

#### **4.2.1 Acceptance of Offer *Not* Required**

The existence of an “offer” of some form of permanent resettlement may establish that an applicant was firmly resettled.<sup>16</sup> The regulations do not further require that the applicant actually accept the offer in order for the firm resettlement bar to apply.

#### **4.2.2 Existence of Legal Mechanisms to Obtain Permanent Status**

The existence of a legal mechanism to obtain permanent status in the third country may be sufficient evidence to establish an offer of firm resettlement, and is not contingent on whether the applicant applies for the status.<sup>17</sup> You should give an applicant the opportunity to explain why he or she would not qualify for or be granted the permanent status.<sup>18</sup>

### *Example*

Applicant credibly testifies that he fled his native Somalia due to persecution, entered South Africa and was granted asylum. The South African government issued him a Certificate of Exemption entitling him to asylum for a two-year period of exemption ending on 6/24/00 and a letter from South Africa’s

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<sup>15</sup> These are the basic facts of [Ali v. Reno](#), 237 F.3d 591, 595 (6th Cir. 2001).

<sup>16</sup> 8 C.F.R. §§ [207.1\(b\)](#) and [208.15](#).

<sup>17</sup> [Matter of A-G-G-](#), 25 I. & N. Dec. at 502-03, noting that [Matter of Soleimani](#), 20 I. & N. Dec. 99 (BIA 1989), would be decided differently under the BIA’s new framework and that the Israel’s Law of Return would be indirect evidence of an offer of firm resettlement and that the applicant in that case would have to show that she would not have been eligible for or granted an offer, or that one of the exceptions applied.

<sup>18</sup> [Matter of A-G-G-](#), 25 I. & N. Dec. at 502-03.

Department of Home Affairs. The letter indicates, “If by 6/24/00, you do not wish to leave South Africa, the onus rests on you to contact the Department for a review of your refugee status or to otherwise legalize your continued stay in South Africa before the expiry date of your Certificate. Failure to do so may render you liable to prosecution.”<sup>19</sup>

Is this direct evidence of an offer of permanent resettlement or some type of permanent resettlement?

This example is from the Third Circuit case of *Abdille v. Ashcroft*. In this case, the BIA found that the Certificate of Exemption represented an offer of some type of permanent resettlement, reasoning that Abdille’s refugee status “does not simply terminate” at the end of the two year period.<sup>20</sup> The Third Circuit disagreed with the BIA, finding that the offer of asylum status had an explicit expiration date and that the Department letter made clear Abdille would be subject to prosecution should he choose to remain in South Africa after the asylum status expiration date. The Third Circuit remanded for further evidence of South African immigration law and practice to determine whether there was an offer of some type of permanent resettlement. The Court reasoned that there might be evidence indicating that “provisions of the Aliens Control Act ease the burden on an alien applying for official permanent resident status if that alien has already received asylum, or that as a matter of immigration practice, two-year refugees like Abdille routinely receive a form of permanent status if they apply for such status prior to the expiration of the two-year exemption period.”<sup>21</sup> No such evidence, however, was presented.

### 4.2.3 Class-based Offers of Resettlement

A class-based, non-individual offer of resettlement, such as by operation of the law of the offering country, could trigger application of the firm resettlement bar, if the applicant has entered that country.<sup>22</sup> The mere possibility that an individual might receive permanent refuge through a third country's asylum procedures, however, is not enough to constitute an offer of permanent resettlement.<sup>23</sup>

### 4.2.4 Residence Permits

Residence permits are issued by governments on a variety of bases and may not necessarily be an offer of permanent residence or some type of permanent resettlement. For more on this topic, *see* section on Permanent Status, below.

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<sup>19</sup> These are the basic facts of *Abdille v. Ashcroft*, 242 F.3d 477 (3d Cir. 2001).

<sup>20</sup> *Id.* at 488.

<sup>21</sup> *Id.* at 489.

<sup>22</sup> *Matter of A-G-G-*, 25 I. & N. Dec. at 502, *citing with approval Elzour v. Ashcroft*, 378 F.3d 1143, 1152 (10th Cir. 2004)(observing that “a third country’s offer of permanent resettlement may consist of providing a defined class of aliens a process through which they are entitled to claim **permanent** refuge.”)(emphasis added).

<sup>23</sup> *Elzour*, 378 F.3d at 1152.

### 4.3 Permanent Status

As the regulations require, the type of status offered or received must be permanent, not temporary.<sup>24</sup> The examples given in the regulations include resident status,<sup>25</sup> permanent resident status,<sup>26</sup> citizenship,<sup>27</sup> or some other type of permanent resettlement.<sup>28</sup> The BIA has noted in *Matter of A-G-G-* that firm resettlement is “the ability to stay in a country indefinitely.”<sup>29</sup>

#### 4.3.1 Loss of Permanent Resident Status

An applicant’s loss of the right to return to a country in which he or she was firmly resettled after becoming a refugee does not necessarily remove the firm resettlement bar.<sup>30</sup> The applicant’s loss of the right to return, however, may be an indication that the status the applicant had in that country was not a permanent status, as is required by the firm resettlement regulation.

##### *Examples*

- Applicant fled his country of nationality due to persecution. Applicant firmly resettled in Country X, but lost the right to return to Country X because Applicant allowed a travel document to expire or remained outside of the country longer than permitted. Despite the loss of status, Applicant may still be barred by the firm resettlement bar if the totality of evidence shows the applicant had the ability to stay in the country indefinitely.
- Applicant is a citizen of Country A and entered Country R where she received a residency permit as a derivative of her mother’s business visa. Applicant’s status is based on her mother’s employment in Country R. Applicant leaves Country R, and out of anger, her mother cancels Applicant’s residency permit. This applicant never received permanent residency, the right to remain indefinitely in Country R. Therefore, she is not subject to the firm resettlement bar.

#### 4.3.2 Length of Time Spent in Third Country

The length of time an applicant spends in a third country does not by itself establish firm resettlement. Firm resettlement occurs only after the applicant has been offered some form of enduring lawful status in that country as demonstrated by direct evidence or, if

<sup>24</sup> 8 C.F.R. §§ [207.1\(b\)](#); [208.15](#).

<sup>25</sup> 8 C.F.R. § [207.1\(b\)](#).

<sup>26</sup> 8 C.F.R. § [208.15](#).

<sup>27</sup> 8 C.F.R. §§ [207.1\(b\)](#); [208.15](#).

<sup>28</sup> 8 C.F.R. §§ [207.1\(b\)](#); [208.15](#).

<sup>29</sup> *Matter of A-G-G-*, 25 I. & N. Dec. 486, 501 (BIA 2011)(emphasis added).

<sup>30</sup> See *Vang v. INS*, 146 F.3d 1114 (9th Cir. 1998).

direct evidence is not available, by circumstantial evidence of an offer of some type of permanent resettlement.

### *Examples*

- Applicant is a citizen of Country A and fled to Country R as a result of persecution. Country R offered Applicant legal permanent resident status. Applicant lived in Country R for one day and then left Country R. She then went to Country S. Even though Applicant only lived in Country R for one day, her short time in Country R does not mean the firm resettlement bar does not apply to her. The pertinent issue is whether Country R offered her the right to stay indefinitely in that country.
- Applicant is a citizen of Country 1 and entered Country 2 illegally where he worked and lived illegally with his family for 30 years, sent his children to public school and rented an apartment. He resided in Country 2 without any legal immigration status, but was never arrested by the authorities for his illegal immigration status or deported from Country 2. Although a 30-year residence in a country is a long length of stay, this does not mean he is firmly resettled in Country 2.<sup>31</sup> In this example, you must take into consideration that Applicant entered Country 2 illegally and resided there without any immigration status or offer of an immigration status.

Length of stay is also a factor to consider in determining whether the “no significant ties” exception applies to an asylum applicant. Under that exception, an asylum applicant is not firmly resettled if entry into the third country was a necessary consequence of flight, the applicant remained there only as long as needed to arrange onward travel, and the applicant did not establish significant ties there.<sup>32</sup>

### **4.3.3 Minors**

To determine whether an individual was firmly resettled when the individual was a minor, you must first determine whether there is any direct evidence of the individual’s status in the third country. If there is no direct evidence, you may consider indirect evidence, including whether the individual’s parents were firmly resettled and whether the individual, as a minor, lived with his or her parents in the country where the parents firmly resettled. If the individual resided with his or her parents, the parents’ firm resettlement would be evidence indicating (or *prima facie* evidence of) the individual’s firm resettlement. If the minor was not in his or her parents’ custody and control, then it would be unreasonable to use evidence of the parents’ firm resettlement to determine the

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<sup>31</sup> As the BIA noted in *Matter of A-G-G-*, only the host country can grant the right to lawfully and permanently reside there; thus, indirect evidence of an offer, such as length of residence, should only be examined when there is no direct evidence. 25 I. & N. Dec. at 501. Permanent resettlement is not a right that can be gained through adverse possession. *Id.* citing with approval, *Abdille v. Ashcroft*, 242F.3d 477, 487 (3d Cir. 2001).

<sup>32</sup> For additional information, see *No Significant Ties* Exception, below.

child's situation.<sup>33</sup> Derivatives (children and spouses) of asylees and refugees are not subject to the firm resettlement bar. See the section, *Derivatives of Refugees and Asylees*, below.

#### 4.3.4 Residence Permits

Residence permits are issued by governments on a variety of bases and may not necessarily be an offer of permanent residence or some type of permanent resettlement.

##### *Example*

Applicant is a citizen of Country A. He was persecuted on account of his religion in Country A and went to Country B on a work residency stamp in his passport which expired in 3 years. He lived with his brother in a house and worked in Country B for 2 years, and then he went to Country C. Is the work residency stamp an offer of permanent residence or some type of permanent resettlement? Though he lived in Country B for 2 years, had family ties to the country, had work authorization and housing, you must elicit testimony to determine whether the residency permit constitutes an offer of permanent residence, some other type of permanent resettlement, or the right to stay indefinitely in the country.

Here are sample questions:

- Does the document, on its face, indicate Applicant is able to stay in the country indefinitely?<sup>34</sup>
- Did Applicant ever renew this permit?
- How difficult is it to renew? (or “What did he have to do to renew this permit?”)
- If Applicant lost his job, what would happen?
- How long could Applicant work in the position he had? Is it a physically demanding job? Could he retire and remain in that country?
- What are the conditions of the permit?

<sup>33</sup> *Khoshfahm v. Holder*, 655 F.3d 1147, 1153 (9th Cir. 2011)(imputing a parent's intent to a child residing with a parent), citing *Saucedo-Arevalo v. Holder*, 636 F.3d 532, 532-33 (9th Cir. 2011)(listing cases); *Vang v. INS*, 146 F.3d 1114 (9th Cir. 1998). In *Vang*, the applicant, who fled Laos with his family when he was 4 years old, came to the United States as a tourist. When he was 19, he applied for asylum in the U.S. To determine whether the applicant was firmly resettled in France when he was a minor, the Court looked to the status of the applicant's parents when they lived in France. Note that *Vang* was decided prior to *Matter of A-G-G-*, which requires that you first must consider direct evidence and, only if there is no direct evidence, you may consider indirect evidence.

<sup>34</sup> If so, this would be direct evidence under *Matter of A-G-G-*, 25 I. & N. Dec. 486, 501 (BIA 2011). If not, you may consider indirect evidence.

- Could his employer terminate this permit?

**Caveat:** For both refugee and asylum interviews, you must first determine whether after the Applicant became a refugee, the Applicant was potentially firmly resettled. If the potential firm resettlement occurred and ended prior to the events that made the Applicant a refugee, the firm resettlement bar does not apply.

**Caveat:** For a refugee resettlement interview, you must first determine whether Applicant entered Country B as a consequence of flight. You should ask Applicant the reasons he went to Country B and not automatically assume his sole reason was for work. For an asylum interview, whether Applicant entered Country B as a consequence of flight is not relevant in determining if Applicant meets the definition of firm resettlement; it is relevant in determining if an exception to firm resettlement for asylum is met. In an asylum adjudication, you should consider whether Applicant entered Country B as a consequence of flight; if he remained only as long as necessary to arrange onward travel; and he did not establish significant ties there.<sup>35</sup>

## 5 EXCEPTIONS TO FIRM RESETTLEMENT

If an applicant meets an exception to the firm resettlement bar, then the applicant is not barred from refugee or asylum status on this basis. The subsections below compare and contrast the exceptions that are available. There is one exception for refugee applicants and two for asylum applicants.

### 5.1 Restrictive Conditions

Both exceptions allow an applicant to establish that the conditions in the third country are so restrictive as to deny resettlement, and both definitions have the same factors to consider when determining restrictive conditions.

<u>Refugee</u>	<u>Asylum</u>
8 C.F.R. § 207.1(b)	8 C.F.R. § 208.15(b)
Applicant must establish that the <i>conditions</i> of his/her residence in that country are <i>so restrictive</i> as to deny resettlement.	An applicant who establishes:  (b) that the <i>conditions</i> of his/her residence in that country were so substantially and consciously <i>restricted by the authority</i> of the country of refuge that he or she was

<sup>35</sup> See [8 C.F.R. § 208.15\(a\)](#) and the section [Exceptions to Firm Resettlement](#).

	not in fact resettled.
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<b>Refugee</b>	<b>Asylum</b>
<p><b>8 C.F.R. § 207.1 (b)</b> lists these restrictive conditions factors:</p> <ul style="list-style-type: none"> <li>• whether permanent or temporary <b>housing</b> is available to the refugee</li> <li>• the nature of <b>employment</b> available to the refugee in the foreign country;</li> <li>• other <b>benefits</b> offered or denied to the refugee by the foreign country which are available to other residents, such as <ul style="list-style-type: none"> <li>➢ right to <b>property</b> ownership</li> <li>➢ <b>travel documentation</b></li> <li>➢ <b>education</b></li> <li>➢ <b>public welfare</b></li> <li>➢ <b>citizenship</b></li> </ul> </li> </ul>	<p><b>8 C.F.R. § 208.15 (b)</b> lists these restrictive conditions factors:</p> <ul style="list-style-type: none"> <li>• the type of <b>housing</b>, whether permanent or temporary made available to the refugee</li> <li>• the types and extent of <b>employment</b> available to the refugee</li> <li>• <b>conditions</b> under which other residents of the country live and, the extent to which the refugee: <ul style="list-style-type: none"> <li>• received permission to hold <b>property</b></li> <li>• to enjoy other rights and privileges, such as <ul style="list-style-type: none"> <li>➢ <b>travel documentation</b> that includes a right of entry or reentry</li> <li>➢ <b>education</b></li> <li>➢ <b>public relief</b></li> <li>➢ <b>naturalization</b></li> </ul> </li> </ul> </li> </ul>

The restrictive conditions exception for refugee applicants is somewhat broader than the exception for asylum applicants. For the exception to apply to a refugee applicant, the applicant may show that either government or non-governmental actors in the third country created conditions “so restrictive as to deny resettlement.”<sup>36</sup> The asylum applicant is limited to showing “the authority of the country of refuge” substantially and

<sup>36</sup> 8 C.F.R. § [207.1\(b\)](#). Unlike the asylum regulation, the refugee firm resettlement regulation does require that the government impose the restrictive conditions.

consciously restricts the conditions of his or her residence. In *Matter of D-X- & Y-Z-*, the BIA held that the Chinese asylum applicants failed to demonstrate any restrictive conditions in Belize.<sup>37</sup> The male applicant was working with his residence permit and the female applicant made no claim that she was ineligible to work with hers; both had also left Belize and legally reentered with their residence permits. The court noted that the female applicant also did not claim harassment, discrimination or persecution in Belize and that the male applicant was also not aware of any restrictions placed on his residence.<sup>38</sup>

Restrictive conditions, which might establish an exception for both refugee applicants under 8 C.F.R. 207.1(b) and asylum applicants under 8 C.F.R. 208.15(b), include the following:

- Formal government policy to limit the rights of non-citizen residents, including refugees
- Inability of government to ensure that individuals receive the above benefits
- Withholding by government of refugee's travel documentation
- Threats or harm by a persecutor in the country of resettlement, causing the individual to fear for his or her safety (this "continuing fear" may so limit the individual's ability to function that he or she is unable to obtain the benefits of firm resettlement)

Note: **Continuing fear** by itself is not enough to show a lack of firm resettlement. The fear must be objective, must cause a restriction on the applicant's resettlement conditions (*e.g.*, restriction of housing, employment, education), and the applicant must show that the government is responsible or that the host country is unable or unwilling to afford the applicant protection from the persecutor.

Indirect evidence of an offer tends to overlap with the factors considered to determine whether conditions of resettlement are so restrictive as to deny resettlement. Under the four-step framework in *Matter of A-G-G-*, you must divide your analysis into offer and post-offer components.

### *Example*

Applicant is a citizen of Country 1 and flees from persecution to Country 2 where he is unable to get a job because prospective private employers hate people from Country 1 and discriminate against them by not hiring them. For a refugee resettlement interview, you would take this factor into consideration to determine if Applicant was firmly resettled. However, for an asylum interview, you would

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<sup>37</sup> [\*Matter of D-X- and Y-Z-\*](#), 25 I&N Dec. 664, 668 (BIA 2012).

<sup>38</sup> *Id.*

not take this into consideration because private actors, not the host government, discriminated against Applicant.

## 5.2 No Significant Ties

As mention above, the second exception applies only to asylum applicants and its requirements are displayed in the box below.

### Asylum Only Exception

8 C.F.R. § 208.15(a) - An asylum applicant is not firmly resettled if the applicant establishes that:

- entry into country was a necessary consequence of his/her flight from persecution
- he or she ***remained only as long as was necessary*** to arrange onward travel
- he or she did ***not*** establish ***significant ties*** in that country

In a recent case interpreting this exception, the BIA found that two Chinese asylum applicants failed to show that they only remained in Belize as long as necessary to arrange for onward travel because both traveled in and out of Belize during their stay.<sup>39</sup> One applicant returned from Belize to China to marry and the other traveled to the United States on a visitor's visa. Both applicants then voluntarily returned to Belize for a time before applying for asylum in the United States.

## 6 ANALYSIS

In 2011, the BIA announced a new four-step framework for deciding firm resettlement cases which first focuses exclusively on the existence of an offer.<sup>40</sup> After reviewing the decisions of the circuit courts, the BIA found that there were two broad methods that the courts had been using to analyze firm resettlement; the “direct offer approach” and the “totality of the circumstances approach.” The Board found that both approaches allowed for direct and indirect evidence to be considered. Notably, the BIA declined to give equal weight to direct and indirect evidence under the new framework. The Board noted that indirect evidence included evidence such as a country's residence laws, length of residence in the country, and the applicant's intent to remain there. The Board found that giving this kind of indirect evidence equal weight with direct evidence “was inconsistent with the fact that only the government of the country in question can grant a person the right to lawfully

<sup>39</sup> [\*Matter of D-X- & Y-Z-\*](#), 25 I&N Dec. 664, 667-68 (BIA 2012).

<sup>40</sup> [\*Matter of A-G-G-\*](#), 25 I&N Dec. 486, 501 (BIA 2011).

and permanently reside there, and that such a right cannot be gained through adverse possession.”<sup>41</sup>

## 6.1 Four-Step Framework

### Step One: Evidence Indicating (or *Prima Facie* Evidence of) an Offer

The officer bears the burden of presenting evidence indicating an offer of firm resettlement. You do this through first securing and producing direct evidence of governmental documents indicating the applicant’s ability to stay in a country indefinitely.

Direct evidence may include:

- evidence of refugee status
- a passport
- a travel document

You may next consider indirect evidence, but only if direct evidence is not available. The indirect evidence must have “a sufficient level of clarity and force” to establish that the applicant is able to “permanently reside” in the country.<sup>42</sup> Indirect evidence may include:

- immigration laws or refugee process of the third country
- length of the individual’s stay
- individual’s intent to settle
- familial ties
- business or property connections
- social and economic ties
- receipt of government benefits
- education opportunities
- possession of rights given to people with an official status (right to work and enter and exit the country)
- access to permanent housing

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41 *Matter of A-G-G-*, 25 I&N Dec. at 501, citing with approval, *Abdille v. Ashcroft*, 242 F.3d 477, 487 (3d Cir. 2001).

42 *Matter of A-G-G-*, 25 I. & N. Dec. 486, 502 (BIA 2011).

**Best Practices:**

The applicant may testify that he or she received asylum from a third country and present documentation to you. It is incumbent upon you to review the evidence carefully and determine whether the grant of asylum was an offer of permanent resettlement. You may elicit pertinent testimony and review country condition information. As illustrated in the example above, documentation of a grant of asylum status does not necessarily constitute direct evidence of an offer of permanent residence or some type of permanent resettlement.

**Step Two: Rebuttal by Applicant**

If there is evidence indicating an offer to stay in the third country indefinitely, the applicant can rebut the evidence of an offer by showing that such an offer has not, in fact, been made or that he or she would not qualify for it. The applicant must make this showing by a preponderance of the evidence.

**Example**

Applicant is a Peruvian national and entered Venezuela illegally where he lived and worked for 14 months. After one year of living in Venezuela, Applicant paid a man to place a Venezuelan resident stamp in his passport. Applicant explains to you that he needed this resident stamp in order to secure a U.S. visa. He received a U.S. tourist visa, entered the United States where he was admitted as a tourist, and then returned to Venezuela where he was admitted with his resident visa. In total, he entered the United States twice with a tourist visa and was readmitted to Venezuela with his resident stamp twice.

This is the fact pattern of *Salazar v. Ashcroft*.<sup>43</sup> The court held that the Government readily met its burden that Salazar's Venezuelan resident stamp was facially valid given that he was readmitted twice to Venezuela with this stamp. However, Salazar was unable to rebut the presumption of firm resettlement. "Salazar produced no evidence that, beyond mere payment for the stamp (to an unidentified man), the stamp was not valid or that any irregularities would result in the eventual invalidation of the stamp by the Venezuelan government."<sup>44</sup> The Court upheld the Immigration Judge's decision that Salazar had been firmly resettled in Venezuela.

Under the four-step framework of *Matter of A-G-G-*, such an applicant could have rebutted the evidence indicating that the residency stamp was fraudulent and that Venezuela had offered or given him permanent residency, but the applicant produced no

<sup>43</sup> *Salazar v. Ashcroft*, 359 F.3d 45 (1st Cir. 2004).

<sup>44</sup> *Id.* at 51.

rebuttal evidence. Similarly, in *Matter of D-X- & Y-Z-*, the applicants failed to show that their permits to reside in Belize, which they claimed were fraudulently obtained, were not issued by the Belize government, as they had successfully traveled outside of Belize and reentered using the permits.<sup>45</sup> As a result, the court held that they were unable to rebut the evidence indicating (or *prima facie* evidence of) firm resettlement.<sup>46</sup>

### **Step Three: Totality of Circumstances**

You must then weigh the totality of the evidence presented and make a determination as to whether the applicant has rebutted the evidence of firm resettlement. Keep in mind that the evidence of firm resettlement must either be direct evidence or, in the absence of direct evidence, indirect evidence of sufficient clarity and force (not mere speculation). If the applicant fails to rebut the evidence, the applicant should be found to have received an offer of permanent resettlement.

### **Step Four: Applicant's Burden to Show Exception**

If the applicant is found to have received an offer of permanent residence, the burden shifts to the applicant to establish, by a preponderance of the evidence, that an exception to firm resettlement applies pursuant to 8 C.F.R. §§ [207.1\(b\)](#), [208.15\(a\)](#) and [\(b\)](#). See *Exceptions to Firm Resettlement*, above. If the applicant is able to meet his or her burden of proof that an exception applies, the applicant may be granted asylum or refugee status.

Restrictive conditions, which might establish an exception for both refugee applicants under 8 C.F.R. 207.1(b) and asylum applicants under 8 C.F.R. 208.15(b), include the following:

- Formal government policy to limit the rights of non-citizen residents, including refugees.
- Inability of government to ensure that individuals receive the benefits listed in Step One above.
- Withholding by government of refugee's travel documentation
- Threats or harm by a persecutor in the country of resettlement, causing the individual to fear for his or her safety (this "continuing fear" may so limit the individual's ability to function that he or she is unable to obtain the benefits of firm resettlement) The applicant must also show that the government is responsible or that the host country is unable or unwilling to afford the applicant protection from the persecutor.

## **6.2 Burden of Proof**

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<sup>45</sup> *Matter of D-X- & Y-Z-*, 25 I&N Dec. 664, 666-67 (BIA 2012).

<sup>46</sup> *Id.*

It is always the applicant's burden to establish eligibility as a refugee, and your burden to elicit testimony. As the adjudicator, you bear the initial burden of producing evidence indicating (or *prima facie* evidence of) firm resettlement.<sup>47</sup>

If you meet this initial burden, the burden shifts to the applicant to show by a preponderance of the evidence that an offer has not in fact been made or that he or she would not qualify for it.<sup>48</sup> Then, you will consider the totality of the evidence presented to determine whether the applicant has rebutted the evidence of an offer of firm resettlement.<sup>49</sup> If you find that the applicant was firmly resettled in a third country, the burden shifts to the applicant to show by a preponderance of the evidence that an exception applies.<sup>50</sup> The BIA has issued a decision with a new framework for adjudicating cases using these shifting burdens of proof. For more details, *see* Four-Step Framework, above.

The burden of proof required for the applicant to establish such facts is a preponderance of the evidence, meaning that the applicant must show that it is more likely than not that he or she rebutted the *prima facie* evidence or that he or she is eligible for an exception.<sup>51</sup> Where the burden of proof has shifted to the applicant, but the applicant has no resources to produce the necessary evidence, it is still your duty to elicit testimony, request additional documentation which is reasonable for the applicant to obtain, and research pertinent country conditions.

BIA case law establishes that "foreign law is a matter to be proven by the party seeking to rely on it."<sup>52</sup> In some instances, the applicant seeks the benefit of foreign law and consequently bears the burden of producing evidence of the foreign law.<sup>53</sup> In other instances, you bear this burden where you are relying on foreign law.<sup>54</sup>

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<sup>47</sup> [A-G-G-](#), 25 I&N Dec. at 501

<sup>48</sup> [A-G-G-](#), 25 I&N Dec. at 503.

<sup>49</sup> [A-G-G-](#), 25 I&N Dec. at 503.

<sup>50</sup> [A-G-G-](#), 25 I&N Dec. at 503.

<sup>51</sup> For additional information about the burden of proof and standard of proof, *see* RAIO Training Module, *Evidence*.

<sup>52</sup> [Matter of Soleimani](#), 20 I&N Dec. 99, 106 (BIA 1989).

<sup>53</sup> [Sadeghi v. INS](#), 40 F.3d 1139 (10th Cir. 1994).

<sup>54</sup> In [Matter of Soleimani](#), 20 I&N Dec. 99, 106 (BIA 1989), legacy INS relied on the BHRHA's reference to Israel's Law of Return to establish the asylum applicant had been offered resettlement in Israel. The BIA rejected this, stating, "However, there is nothing in the record, beyond the BHRHA's perfunctory reference to its existence, documenting the nature and purpose of Israel's Law of Return or the specific provisions of that law. Absent any such documentation, the Board cannot find that the respondent had been offered permanent resettlement in Israel within the meaning of the firm resettlement concept. There exists no evidence that the respondent would be eligible for an offer of resettlement under any such law and no evidence regarding the extent of any restrictions or conditions that may be placed on offers of resettlement under that law. Foreign law is a matter to be proven by the party seeking to rely on it, and the INS has submitted nothing of record regarding Israel's Law of Return." *But see* [Matter of A-G-G-](#), 25 I&N Dec. 486, 502-03 (BIA 2011)(stating that [Matter of Soleimani](#) would be decided differently if considered under the new *A-G-G-* framework and noting that the Law of Return would be indirect evidence of an

### *Example*

You are adjudicating a refugee resettlement application in Damascus, Syria. The applicant shows you his passport with the UAE residence stamp. There is sufficient evidence that as a consequence of his flight from persecution in Iraq, the applicant entered the United Arab Emirates with a UAE residence stamp. The burden of proof now shifts to the applicant to rebut the presumption of firm resettlement or to show that he meets one of the exceptions to firm resettlement. You should elicit testimony regarding the UAE residence stamp.

Here are some sample questions:

- How did you obtain this residence stamp from the UAE?
- Does it have any restrictions? Is there anything you must do, or must not do because you have this stamp?
- Did you use this resident stamp to travel?
- Does it have an expiration date?
- What do you have to do to renew this?
- Did you ever try to renew it?

## **6.3 Issues to Consider**

### **6.3.1 Firm Resettlement and Dual Nationality**

Firm resettlement and dual nationality may overlap in your refugee or asylum adjudication. Here are a few points to keep in mind:

- Firm resettlement may include, but does not require, citizenship. Firm resettlement does require entry into the third country and an offer of permanent status.
- Dual nationality does require citizenship, but does not require entry or presence in the third country and may not be based on a mere offer of citizenship.
- An applicant who is a dual national must establish that he or she meets the definition of a refugee as to both countries of nationality in order to be eligible for refugee resettlement or asylum.
- An applicant who is found to be firmly resettled in a third country does not need to establish that he or she is a refugee as to the country of firm resettlement, but the

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offer and that the applicant would have to present rebuttal evidence that she was ineligible for or would not have been granted an offer or that one of the exceptions applied.).

applicant must establish that he or she is eligible for an exception to the firm resettlement bar to be eligible for asylum or refugee status.<sup>55</sup>

### **6.3.2 Derivatives of Refugees and Asylees and I-730 Beneficiaries**

The firm resettlement bar does not apply to the spouse and children of refugees and asylees who are derivatives of the principal applicant. Such individuals are eligible for derivative asylum and refugee status, regardless of whether they are firmly resettled in a third country.<sup>56</sup>

#### ***Example***

Mohammad fled country X after he learned that he was sought by the police for attending an anti-government rally. He fled directly to the United States. While his application for asylum was pending, his wife Sharifa and their two children moved to country Y where Sharifa's family lived. Although they were not citizens of country Y, Sharifa and the children were offered the possibility of becoming citizens there. They did not accept the offer. Thereafter, Mohammad's application for asylum was approved by the United States, and he filed an I-730 for Sharifa and the children. The offer of firm resettlement for Sharifa and the children does not factor into the determination of their eligibility as beneficiaries under an I-730 petition.

## **7 CONCLUSION**

Firm resettlement is a bar to both asylum and refugee resettlement. The definitions of firm resettlement for these two forms of protection are similar, but differ in several ways. In both, an applicant is not barred by firm resettlement where the potential firm resettlement in a third country ended prior to becoming a refugee. Both also require entry into a third country and an offer or receipt of permanent residency or some other type of permanent resettlement. The refugee bar requires that an applicant entered the third country as a consequence of his or her flight from persecution. There is no such requirement for asylum applicants.

Both firm resettlement bars have an exception for individuals who are subject to restrictive conditions in the third country either by the government or, for refugee applicants only, non-government actors. Asylum applicants have a second exception to the firm resettlement bar if they entered into the third country as a consequence of flight from persecution, stayed only as long as necessary to arrange for onward travel and established no significant ties to the third country.

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<sup>55</sup> For additional information, refer to *Exceptions* section and *Applicant's Burden to Show Exception* section, above.

<sup>56</sup> 8 C.F.R. § [207.7](#); 8 C.F.R. § [208.21](#)(a).

In response to conflicting decisions by courts, in 2011 the BIA established a four-step framework for adjudicating the firm resettlement bar which focuses first on the existence of an offer and gives greater weight to direct evidence of whether the applicant was offered or received a permanent status in the third country.

## **8 SUMMARY**

### **8.1 Historical Overview**

The firm resettlement bar has its origins in the 1946 Constitution of the International Refugee Organization and the 1951 Convention relating to the Status of Refugees. This bar appeared in U.S. law as early as 1948. It fluctuated between being a mandatory and a discretionary bar. Firm resettlement was added as a mandatory statutory bar to refugee resettlement in 1980 and as a mandatory statutory bar to asylum in 1996.

### **8.2 Sources of Authority and Requirements of Firm Resettlement**

The statutory firm resettlement bars are found at INA § 207(c)(1)(refugee resettlement) and INA § 208(b)(A)(vi)(asylum). The regulations, found at 8 C.F.R. § 207.1(b)(refugee resettlement) and § 208.15 (asylum), define firm resettlement for each form of protection. Each definition requires entry into a third country and an offer or receipt of some type of permanent resettlement. The main difference between the two definitions is that for refugee resettlement applicants, the entry into the third country must be as a “consequence of flight” from persecution. The asylum firm resettlement bar does not have this requirement, but for the firm resettlement analysis to apply, the applicant must receive an offer of firm resettlement after becoming a refugee. Over the years, courts have interpreted the firm resettlement bar in different ways. To reconcile these differences, the BIA issued a precedent decision in 2011, *Matter of A-G-G-*, which sets forth a four-step framework for deciding firm resettlement cases.

An offer need not be accepted for the firm resettlement bar to apply. The existence of a legal mechanism, or a class-based offer, for obtaining permanent status may be sufficient evidence to establish an offer of permanent resettlement. The status must be permanent, not temporary. Loss of permanent status does not necessarily remove the firm resettlement bar. In the absence of direct evidence, if minors are under their parents’ custody and control, the parents’ firm resettlement is evidence indicating the minors’ firm resettlement in the third country.

### **8.3 Exceptions to Firm Resettlement**

Both firm resettlement bars have an exception based on restrictive conditions in the country of resettlement. Under the restrictive conditions exceptions, you may consider the following factors: housing, employment, and rights to property ownership, travel documentation, education, welfare and citizenship. For asylum purposes, you may only consider the conditions imposed by the government in the third country. For refugee

resettlement, you may consider conditions imposed by both government and non-government actors.

Asylum applicants are also eligible for an exception based on the lack of significant ties in the third country. To meet this exception, asylum applicants must show they entered the third country as a consequence of flight, remained there only as long as necessary to arrange onward travel, and did not establish significant ties to that country.

#### **8.4 Analysis and the Four-Step Framework of *Matter of A-G-G-***

In 2011, the BIA in *Matter of A-G-G-* established a four-step framework for adjudicating the firm resettlement bar which focuses exclusively on the existence of an offer. The BIA also held that adjudicators must look first to direct evidence in determining whether an offer has been made and may only consider indirect evidence if no direct evidence is available. The framework has the following four steps:

1. *Prima Facie* Evidence of an Offer (Officer's Burden)

You bear the burden of presenting *prima facie* evidence of (or evidence indicating) an offer of firm resettlement. You do this through first securing and producing direct evidence of governmental documents indicating the applicant's ability to stay in the country indefinitely. Direct evidence may include: a passport, a travel document, or evidence of refugee status. You may consider indirect evidence only if direct evidence is not available and only if the indirect evidence is of sufficient clarity and force (not mere speculation).

2. Rebuttal (Applicant's Burden)

If you present *prima facie* evidence of firm resettlement, the burden shifts to the applicant to rebut that evidence by showing that an offer has not, in fact been made or that he or she would not qualify for it.

3. Totality of Circumstances (Officer Must Weigh)

You must then weigh the totality of the evidence presented and make a determination as to whether the applicant has rebutted the evidence of firm resettlement by a preponderance of the evidence.

4. Exception (Applicant's Burden)

If the applicant is found to have received an offer of permanent residence, the burden shifts to the applicant to establish by a preponderance of the evidence<sup>57</sup> that an exception applies.

#### **8.5 Burden of Proof**

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<sup>57</sup> See *Burden of Proof* section, above.

It is always the applicant's burden to establish eligibility as a refugee and your burden to elicit testimony. As the adjudicator, you bear the initial burden of producing evidence indicating (or *prima facie* evidence of) firm resettlement. The burden then shifts to the applicant to show by a preponderance of the evidence that an offer has not in fact been made or that the applicant would not qualify for it. The burden of proof required for the applicant is a preponderance of the evidence, meaning the applicant must show it is more likely than not that he or she rebutted the evidence indicating firm resettlement.

## **8.6 Issues to Consider**

When making a firm resettlement determination, careful consideration should be given to issues regarding dual nationality. Also, the firm resettlement bar does not apply to derivatives of principal applicants and I-730 beneficiaries.

## PRACTICAL EXERCISES

### Practical Exercise # 1

- **Title: Iraqi Applicant**
- **Student Materials:**

After reviewing the facts and interview notes below, determine the following:

- Is the applicant firmly resettled in Australia for purposes of a refugee resettlement adjudication?
- Is the applicant firmly resettled in Australia for purposes of an asylum adjudication?

Applicant credibly testified to the following at his DHS interview: he is a native of Iraq where he worked in the Green Zone as an interpreter for the American Army. He began receiving threatening text messages on his cell phone because he worked for the Americans. His employment ended, and he relocated to another area in Iraq where he worked under the Ministry of Trade. For work related matters, he travelled to Australia and remained there from 10/08 – 2/10. He joined his family in Jordan. He feels personally targeted especially since the word spread in his Iraqi neighborhood that he had travelled to Australia and had been working with U.S. forces, which is considered treason according to certain extremist groups.

Here is an excerpt of the interview notes:

Q: How long in Australia?

A: 10/08 – 2/10

Q: Doing there?

A: Went to Australia on a training course as Ministry of Trade Iraqi Government employee from Nov. 3-28, 2008.

Q: Sought asylum?

A: Yes, I applied when course ended.

Q: Result?

A: Granted permanent residency in Australia on 4/23/2009.

Q: Right to live and work indefinitely in Australia?

A: Yes

Q: Right to apply for Australian citizenship?

A: After 4 years residency in Australia can apply

Q: What was your granted status in Australia called?

A: Protection Visa Class XA

Q: Have you applied for wife and children to immigrate to Australia?

A: Yes

Q: Result?

A: Australian gov't will not provide financial support to bring wife and kids to Australia

Q: Do you have the right to bring them to Australia though?

A: Yes

Q: Why seek resettlement in USA?

A: Because there is financial support to get there, and my father has applied for resettlement to U.S. and has had DHS interview and awaiting response

### Practical Exercise # 2

- **Title: Iranian Applicant**

- **Student Materials:**

After reviewing the facts below, determine the following:

- Is the applicant firmly resettled in the UAE for purposes of a refugee resettlement adjudication?
- Is the applicant firmly resettled in the UAE for purposes of an asylum adjudication?
- For asylum cases, is there a requirement that the applicant entered the host country as *a consequence of flight* from persecution?
- Is the applicant's work residency permit – an offer of permanent resettlement or some other type of permanent resettlement?

Applicant credibly testified to the following at her DHS interview: She is a native of Iran. Her parents separated, and she moved with her mother to the UAE as a

dependent on her mother's UAE employee residence permit. Applicant lived in UAE as a resident from 2002-2005 where she worked, owns property for which she receives rent, and generally lived without any restrictions. Applicant came to the U.S. on a visa to work with Voice of America, and on the radio as a journalist, she discussed the political situation in Iran. Applicant's mother cancelled Applicant's UAE residence permit.

**OTHER MATERIALS****Firm Resettlement Case Law****2012**

[Matter of D-X- and Y-Z-](#), 25 I&N Dec. 664 (BIA 2012).

**2011**

[Matter of A-G-G-](#), 25 I&N Dec. 486 (BIA 2011).

**2001**

[Abdille v. Ashcroft](#), 242 F.3d 477 (3d Cir. 2001).

[Ali v. Reno](#), 237 F.3d 591 (6th Cir. 2001).

**1998**

[Vang v. INS](#), 146 F.3d 1114 (9th Cir. 1998).

**1994**

[Sadeghi v. INS](#), 40 F.3d 1139 (10th Cir. 1994)

**1989**

[Matter of Soleimani](#), 20 I&N Dec. 99, 106 (BIA 1989)

**1971**

[Rosenberg v. Yee Chien Woo](#), 402 U.S. 49 (1971).

**SUPPLEMENT A – REFUGEE AFFAIRS DIVISION**

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

<p style="text-align: center;"><b><u>RAD Supplement</u></b></p> <p style="text-align: center;"><b>Module Section Subheading</b></p>
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**SUPPLEMENT B – ASYLUM DIVISION**

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

- 1.
- 2.

**ADDITIONAL RESOURCES**

- 1.
- 2.

**SUPPLEMENTS**

<p style="text-align: center;"><b><u>ASM Supplement</u></b></p> <p style="text-align: center;"><b>Module Section Subheading</b></p>
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**SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION**

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

**REQUIRED READING**

- 1.

**ADDITIONAL RESOURCES**

- 1.

**SUPPLEMENTS**

<p style="text-align: center;"><b><u>IO Supplement</u></b></p> <p style="text-align: center;"><b>Module Section Subheading</b></p>
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