

Third Circuit Court**Case:** *Abdille v. Ashcroft*, 242 F.3d 477 (3d Cir. 2001)**Date:** March 7, 2001**Panel:** Becker, Nygaard, Fuentes**Opinion:** Becker**Tags:** Immigration, asylum, firm resettlement, persecution, motive, nexus, protected ground, refugee, Somalia, South Africa**Question(s) Presented:**

- Was asylum improperly denied because of an incorrect finding of firm resettlement?
- Was asylum improperly denied because respondent established persecution?

Holdings:

- BIA's decision re. firm resettlement in South Africa is inadequate. Remanded for further fact-finding.
- Upheld BIA's finding that respondent failed to meet burden of persecution.

Rationale:

- Need more info about SA law wrt offers of permanence. INS has initial burden, because it wants to rely on foreign law: but once INS introduces evidence, burden of proof regarding SA law will shift to respondent.

Facts: Somali citizen orphaned when a very young child, and could not trace his clan lineage. Somalia splintered along clan lines in 1991. "Clanlessness is rare in Somalia, and an individual who is unable to trace his lineage, such as Abdille, is often suspected of hiding his true affiliation and presumed to be a member of a rival clan." 481 Lost job; repeated confrontations, detentions, assaults by militia members. Fled Somalia in 1998 to Mozambique and South Africa. Received asylum from SA, expiring 2000, at which point he would have to contact the authorities to legalize his stay. While in SA, was attacked twice while working as a street vendor. Entered U.S. on a South African passport in 1999.

Procedural History:

- **1999: IJ:** denied asylum because failed to demonstrate persecution/well-founded fear and was firmly resettled in South Africa.
- **2000: BIA:** affirmed.

Appeals to Statute & Precedent:

- **8 C.F.R. § 208.15:** firm resettlement: offer of permanent resident status, citizenship, or some other type of permanent resettlement, regardless of noncitizen's ties or intentions regarding that country. Only doesn't count if it was a necessary stop on the way somewhere else, or there was evidence that it was not truly "resettlement" that was offered.
- **8 U.S.C. §1158(b)(2)(A):** firm resettlement ban

Relevant U.S. History:

- **Firm Resettlement:** newly codified at this time: “precludes the Attorney General from granting asylum to an applicant when the Attorney General finds that the applicant had firmly resettled in a third country prior to his arrival in the United States.” 480

Discussion:

- “the parties do not dispute that Abdille satisfied his burden in establishing past persecution or a well-founded fear of persecution in Somalia, and that, absent application of the firm resettlement bar, Abdille would be eligible for asylum from that country.” 481

Firm Resettlement:

- “It is readily evident from the plain language of § 208.15 that the prime element in the firm resettlement inquiry is the existence *vel non* of “an offer of permanent resident status, citizenship, or some other type of permanent resettlement.” 485
 - “Thus, on its face, § 208.15 explicitly centers the firm resettlement analysis on the question whether a third country issued to the alien an offer of some type of official status permitting the alien to reside in that country on a permanent basis.” 485
- Considering “totality” of circumstances would introduce non-objective factors into the analysis, such as the noncitizen’s intent to stay. But statute is enough and does not call for a broader analytical framework.
 - If there’s a case where the IJ / BIA can’t get info about the country’s firm resettlement offers, then it would make sense to consider things like the noncitizen’s intent to stay, their length of time in the country, and the ties they’ve made there.
- There has to be some government dispensation for this: can’t just sneak across the border and expect to have citizenship. “Citizenship or permanent residency cannot be gained through adverse possession.” 487
 - Not really clear that South Africa offered this to respondent in their official communication with him about his (limited) refugee status. Court doubts that it was an offer: it was more like a warning that he’d better check in with the gov’t or be prosecuted or kicked out.
- Burden of producing evidence about the foreign law is on the party that seeks to rely on it (here, the INS).

Persecution

- Might have been animus from SA public directed at foreign asylum-seeker, but evidence does not compel such a conclusion.
- But it’s also consistent with acts of private violence that does not have a nexus to a protected ground.
 - “**Such ordinary criminal activity does not rise to the level of persecution necessary to establish eligibility for asylum.**” 494
- Needed to show a well-founded fear for more than just one area of the country.