

## Immigration Court: BIA

Case: *Matter of K-S-H-, 29 I&N Dec. 307 (BIA 2025)*

Date: November 17, 2025

Adjudicated by: Mullane, Creppy, Goodwin

Opinion: Goodwin

Tags: Asylum, police reports, government inability / unwillingness

**Question Presented:** Whether a single police report re. private actors is sufficient**Holdings:** “A single attempt to report an incident of harm by private actors to local police, without further harm from the police themselves or evidence of their widespread collusion with the alleged persecutors, does not establish that the government, as a whole, is unable or unwilling to protect a respondent from persecution.” 307**Rationale:** R has to try harder to get help before he meets the burden of showing that the (local) government is “unable and unwilling” to protect.**Facts:** (307-308) India, Sikh. Fears persecution by Hindus and political opponents because of his Hindu girlfriend. He attempted to report the attack, but claims police refused to take the report because girlfriend’s father was an influential member of BJP party. He said police officer said he’d be detained if he tried to make a report.**Procedural History:**

- **12/6/2022:** IJ denied I589 for lack of demonstration that government was unable or unwilling to control private actors based on statement of a single police officer.

**Appeals to Statute & Precedent:**

- **8 C.F.R. § 1208.13(b) (2020):** without past persecution, R must establish well-founded fear of future persecution.
- **Rodriguez Tornes v. Garland, 993 F.3d 743, 741 (9th Cir. 2021):** regarding harm by individuals or forces that the government is unable or unwilling to control – review for clear error
- **Matter of C-G-T-, 28 I&N Dec. 740, 743 (BIA 2023):** whether the government is unable or unwilling to protect someone is a factual question that the Board reviews for clear error. No need to report if doing so would be futile or dangerous.
- **Bringas-Rodriguez v. Sessions, 850 F.3d 1051, 1069 (9th Cir. 2017) (en banc):** “Whether a victim has reported or attempted to report violence or abuse to the authorities is a factor that may be considered as is credible testimony or documentary evidence explaining why a victim did not report.”
- **Garland v. Ming Dai, 593 U.S. 357, 366 (2021):** “so long as the record contains ‘contrary evidence’ of a ‘kind and quality’ that a reasonable factfinder could find sufficient, a reviewing court may not overturn the agency’s factual determination.”
- **Singh-Kar v. Bondi, 137 F.4th 94, 101 (2d Cir. 2025):** “Testimony that the police failed to assist [an alien] on one occasion, without more, does not establish an entire government’s inability or unwillingness to protect him.”

- ***Vahora v. Holder*, 707 F.3d 904, 909-10 (7<sup>th</sup> Cir. 2023)**: “a one-off conversation with an unhelpful officer does not necessarily show that a government is ‘unable or unwilling’ to protect a victim.” (Citation omitted)
- ***Singh v. Bondi*, 130 F.4<sup>th</sup> 848 (10<sup>th</sup> Cir. 2025)**: one attempt to report an attack & was kicked out of police station does not satisfy burden.
- ***Davila v. Barr*, 968 F.3d 1136, 1142-44 (9<sup>th</sup> Cir. 2020)**: an alien satisfied her burden of proving the Nicaraguan Government was unable or unwilling to control abuser: bribed police officers & beat her after she made a report – harmed as a result of reporting.
- ***Ornelas-Chavez v. Gonzalez*, 458 F.3d 1052, 1058 (9<sup>th</sup> Cir. 2006)**: An applicant need not report abuse if doing so would be futile or dangerous.
- ***Mashiri v. Ashcroft*, 383 F.3d 1112, 1122 (9<sup>th</sup> Cir. 2004)**: respondent is not required to show nationwide inability to control persecutor, just in the “home city or area.”

**Discussion:**

- “The IJ also found that the respondent never sought any further assistance from the government after unsuccessfully attempting to file a report of the initial incident.” 308
- “Overall, one local police officer’s refusal to take a report because of concerns about a local BJP member does not establish that the Government of India, as a whole, would be unable or unwilling to control the respondent’s alleged persecutors.” 309
- “We hold that a single attempt to report an incident of harm by private actors to local police, without further harm from the police themselves or evidence of their widespread collusion with alleged persecutors, does not establish that the government, as a whole, is unable or unwilling to protect a respondent from persecution.” 310
- Not required to show nationwide inability – just within the home city or area. *Mashiri v. Ashcroft* at 1122 (9<sup>th</sup> Cir.).
  - “our analysis does not require an applicant to seek assistance outside his home city or area.” 310 n.3

**Commentary:**

- Tips to distinguish:
  - Abuse after making a report
  - Futele or dangerous to try making the report
  - Abuser/persecutor bribed police
  - Not required to seek assistance outside home community (310 n.3)
  - More than one attempt