

Immigration Court: BIA**Case:** *Matter of L-F-R-*, 29 I&N Dec. 787 (BIA 2026)**Date:** July 24, 2026**Adjudicated by:** Gorman, Picos, Volkert**Opinion:** Gorman**Tags:** Annual Asylum Fee, OBBBA, Withholding of Removal, CAT, pretermission**Questions Presented:**

- (1) Whether it's appropriate for the IJ to pretermite an asylum application when the AAF was not paid by the deadline imposed by the IJ
- (2) Whether the "annual asylum fee" applies to withholding of removal & CAT claims

Holdings:

- (1) "If an alien fails to pay the annual asylum fee within the prescribed deadline, the alien's asylum application should be pretermitted or deemed abandoned." 787
- (2) "The annual asylum fee and consequences for not paying it do not extend to an application for statutory withholding of removal or a request for protection under the regulations implementing the Convention Against Torture." 787
- (3) "It was error to pretermite the entire Form I-589 application." Case remanded to IJ to (solely) consider withholding and CAT, because these shouldn't have been pretermitted. 792
- (4) (Arguably): IJs who choose to articulate a deadline should give "sufficient notice and opportunity to pay the [AAF]." 792 (here, the notice deemed "sufficient" was one month. *See* 788)

Rationale:

- Plain text of the OBBBA does not reference withholding of removal and protection under the CAT when it mentions the AAF, even though Congress has shown in the past that it knows how to include those forms of relief in the text when it wants to. Therefore, it didn't want to here. 791

Procedural History:

- January 13, 2025: Respondent timely filed I-589 application. 787-88
- February 12, 2026: IJ gave one month for R to pay AAF. 788
- March 16, 2026: AAF not paid by deadline, IJ pretermitted the whole I-589. 788

Appeals to Statutes & Regulations:

- **8 U.S.C.A. § 1802(a) (West 2025): [OBBBA]** "In addition to any other fee authorized by law, . . . the Attorney General . . . shall require the payment of a fee, equal to the amount specified in this section, by any alien who files an application for asylum under section 1158 of this title at the time such application is filed."

- **8 U.S.C.A. § 1808(a) (West 2025): [OBBBA]** “In addition to any other fee authorized by law, for each calendar year that an alien’s application for asylum remains pending . . . the Attorney General . . . shall require the payment of a fee, equal to the amount specified in subsection (b), by such alien.”
- **INA § 208 / 8 U.S.C. § 1158 (2024):** asylum statute
 - **INA § 208(a)(2)(B), 8 U.S.C. § 1158(a)(2)(B):** 1-year filing requirement for asylum
 - **INA § 208(b)(2)(B)(i), 8 U.S.C. § 1158(b)(2)(B)(i):** all aggravated felonies are per se particularly serious crimes for asylum
- **INA § 212(l)(2), 8 U.S.C. § 1182(l)(2):** discussing application for withholding of removal OR application for asylum in the context of the Guam and Northern Mariana Islands visa waiver program.
- **INA § 241(b)(3) / 8 U.S.C. § 1231(b)(3)(2024):** Withholding of removal statute
 - **INA § 241(b)(3)(B), 8 U.S.C. § 1231(b)(3)(B):** an agg fel is a per se particularly serious crime for withholding of removal if the respondent was sentenced to an aggregate term of imprisonment of at least 5 years.
- **8 C.F.R. §§ 1208.16(c), 1208.17 (2026); 8 C.F.R. § 1208.18(a)(2020):** CAT regulations
- **8 C.F.R. § 1003.24(d):** new regs pertaining to fees for asilos
- **8 C.F.R. § 1103.7(b)(4)(iii):** new regs pertaining to fees for asilos
- **8 C.F.R. § 1208.1(a)(1) (2020):** “application for asylum” applies to “all applications for asylum under section 208 of the Act or for withholding of deportation or withholding of removal under section 241(b)(3) of the Act, or under the Convention Against Torture, whether before an asylum officer or an immigration judge, regardless of the date of filing.” 790
- **8 C.F.R. § 1208.1(a)(2) (2020):** prohibits the filing of an “application for asylum” by any alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands.
- **8 C.F.R. § 1208.3(b) (2026):** “An asylum application shall be deemed to constitute at the same time an application for withholding of removal.”
- **8 C.F.R. § 1208.3(a)(1)(2026):** “A single application, Form I-589, is the means to apply for asylum, withholding of removal, and protection under the CAT.” 790
- **8 C.F.R. § 1208.31(a), (c), (e) (20206):** AAF does not apply when filing ONLY withholding of removal or CAT protection, as in RFIs. (See 791)
- **8 C.F.R. § 1003.31(h):** IJs may set filing deadlines.

Relevant Case Law:

- **Matter of R-C-R-, 28 I&N Dec. 74, 77 (BIA 2020):** IJs have authority to set filing deadlines
- **Matter of Interiano-Rosa, 25 I&N Dec. 264, 265 (BIA 2010):** same ^^

- ***Jimenez v. Quarterman*, 555 U.S. 113, 118 (2009):** “As with any question of statutory interpretation, our analysis begins with the plain language of the statute.”
- ***Matter of Negusie*, 28 I&N Dec. 120, 126 (A.G. 2020):** “The Supreme Court has repeatedly cautioned against reading words, element, or implied exceptions into a statute.”
 - ***Dean v. United States*, 556 U.S. 568, 572 (2009)**
 - ***Bates v. United States*, 522 U.S. 23, 29 (1997)**
- ***Russello v. U.S.*, 464 U.S. 16, 23 (1983):** “Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” 791 (citation modified)
- ***Efe v. Ashcroft*, 293 F.3d 899, 907 (5th Cir. 2002):** “A claim for protection under the CAT also requires ‘separate analytical attention’ from asylum and statutory withholding of removal claims.” 792
- ***United States v. Temple*, 105 U.S. 97, 99 (1881):** “we have no right to insert words and phrases, so as to incorporate in the statute a new and distinct provision.” (q. at 792)

Relevant U.S. History:

- July 4, 2025 = One Big Beautiful Bill Act (“OBBBA”), Pub. L. No. 119-21, §§ 100001-100018, 139 Stat. 72, 364-85 (2025). Codified at 8 U.S.C.A. § 1808 (West 2025).
- “The statutory command [to pay the asilo fee(s)] adds a new requirement for asylum eligibility.” 789
- “. . . the OBBA does not distinguish between proceedings in Immigration Court and proceedings before this Board.” 789 (IOW, BIA can also set AAF deadlines.)

Discussion:

- “After considering these issues in detail, and as analyzed further below, we hold that the annual asylum fee is a statutorily required fee and the failure to pay the annual asylum fee is fatal to an alien’s asylum claim. But, consistent with the plain language of the OBBBA, the annual asylum fee and consequences for not paying it do not extend to an application for statutory withholding of removal or a request for protection under the CAT.” 788
- “Immigration Judges can set deadlines for paying the annual asylum fee, and, if an alien fails to pay the annual asylum fee within the prescribed deadline, the alien’s asylum application should be pretermitted or deemed abandoned.” 789
- “The OBBBA’s discussion of fees does not anywhere mention statutory withholding of removal, which is set forth in section 241(b)(3) of the INA, 8 U.S.C. § 1231(b)(3), an entirely different section of the INA; nor does it mention the regulations implementing the CAT.” 791

- “While DHS’ argument about the regulatory definition of ‘asylum application’ has persuasive force, it does not sufficiently establish that the plain language of the OBBBA necessarily includes statutory withholding of removal and protection under the CAT.”
791
- “Congress thus can choose to mention applications for asylum, withholding of removal, and CAT claims, but did not otherwise do so in the OBBBA.” 791
- Note that Asylum & Withholding of Removal have different eligibility requirements: (792)
 - Asylum is discretionary; WH is mandatory
 - Asylum has a 1-year deadline, WH does not
 - Asylum counts ag fels as per se PSCs; WH only counts them if R was sentenced to an aggregate term of imprisonment of at least 5 years
- “Ultimately, while DHS’ reliance on the regulatory definition of ‘asylum application’ might very well result in a sound and coherent policy, that construction is not so well-settled that it overcomes the plain language of the OBBBA.” 792
 - But note the CYA footnote—“We do not view the OBBBA as somehow negating the comprehensive regulatory framework noted by DHS.” 792 n.8

Commentary:

- BIA sides with respondent and amici:
 - “According to the respondent and amici, an Immigration Judge cannot pretermitt non-asylum forms of protection from removal for failure to pay the asylum fee or annual asylum fee.” 790
 - “The respondent’s and amici’s plain language arguments are the clearer reading of the statute.” 792
- DHS wants everyone to suffer the same:
 - “DHS, by contrast, argues that an alien who requests asylum, statutory withholding of removal, and protection under the CAT must comply with the annual asylum fee requirements to have his or her application for each form of protection considered.” 790

NOTES & OBSERVATIONS:

- This is actually a rare case that falls out in favor of the noncitizen respondent: they successfully argued that the AAF does not apply to withholding of removal and CAT, and that pretermission for failure to pay the prescribed AAF is only appropriate for the asylum claim.

- It's also a snapshot of the current Congress's (or Stephen Miller's) shortsightedness: "As noted, Congress understands how to reference applications for withholding of removal and protection under the CAT in legislation but did not explicitly include them in the context of the OBBBA." (OOPS.) 792
- This decision also showcases a rare split between DHS and the BIA! They are not apparently entirely in lockstep, at least when Malphrus is not writing the opinion. (But note the CYA footnote on 792.)
- The Board notes DHS's concession that "the [AAF] does not apply in cases where an alien files a Form I-589 only for statutory withholding of removal or CAT protection," 791, but it's not clear here whether DHS's understanding also contemplates that an *initial* filing fee for WH / CAT I-589 applications does not apply. (If it doesn't apply, how do we differentiate an I-589 filed for WH only when uploading to ECAS so that it isn't rejected?)
- There is no standardization to the setting of an annual asylum fee deadline in the Immigration Courts. The BIA says that IJs "CAN" articulate a deadline (789), but this implies they can also choose *not* to; and among those who choose to do so, no two do it the same way, as of the date of this decision.
- If IJs choose to set a deadline, the BIA's standard would be "sufficient notice and opportunity to pay" the annual asylum fee. 792 Note that the IJ in this case gave a little more than ONE MONTH of notice. Can we use this example to make an argument on appeal, if an IJ pretermits after giving a deadline of ONE DAY?