Immigration Court: BIA

Case: ***Matter of B-S-A-N-*, 30 I&N Dec. 145 (BIA 2026)** **Date:** October 9, 2026

Adjudicated by: Radics, Montante, Gallow **Opinion:** Radics

Tags: Asylum, frivolous application, democratic countries, EU

Question Presented: What prospects are there for asylum seekers from developed, democratic countries?

Holdings: (this is a general policy governing discretion! – 152)

1. IJs should **generally** deny asylum applications filed by nationals of highly developed, democratic countries that broadly respect and protect human rights, except in extraordinary circumstances involving national security or foreign policy considerations.
    a. ". . . it will **generally** be appropriate for IJs to pretermit asylum applications filed by nationals of those countries, **typically** at the master calendar stage." 150
    b. This includes all members of the EU: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden. 150 n.5
    c. It also includes Iceland, Liechtenstein, Norway, Switzerland, Monaco, Andorra, San Marino, UK, Canada, Australia, New Zealand, Japan, South Korea. 150

2. EU citizens are presumptively ineligible for a discretionary grant of asylum in the US because they are entitled to indefinitely reside lawfully in any EU member state.
    a. "Even if an EU national could establish a well-founded fear of persecution in his country of nationality, we conclude that he would not be entitled to asylum as a matter of discretion unless he shows that he cannot safely reside in any of the other 26 member states of the European Union." 153

Rationale: "[W]e conclude that the respondent has not established an objectively reasonable fear of persecution in France." 147

- "This case illustrates the meritless nature of asylum claims by nationals of highly developed democratic countries, such as France, that are widely recognized for their human rights protections." 148
- "Meritless asylum claims by nationals of highly developed, democratic countries that provide effective protection to their citizens constitute an abuse of the asylum process, waste scarce adjudicatory resources, and unfairly deprive bona fide refugees of timely consideration of their claims." 149

- "There is simply **no realistic basis** on which anyone could claim that the governments of these countries persecute their citizens." 151
- " . . . **it is implausible** that anyone could demonstrate the level of persistent or systemic inaction required to establish that a gov't is unable or unwilling to protect its citizens from private persecution." 151
- ". . . we hold that EU citizens are presumptively ineligible for a discretionary grant of asylum in the United States because they are entitled to indefinitely reside lawfully in any EU member state and thereby obtain safe haven." 154 (By this time, the writer has lost hold of the **prerequisites** to this freedom of movement and resettlement.)

Facts: (145-146) Native of France & citizen of France & Gabon. Moved from France to Gabon as an infant. Family opposed rule of former president of Gabon and the Gabonese Democratic Party (PDG). Fear of harm in France from agents of Gabonese gov't. France was the only country of removal designated by DHS.

Procedural History:

- **Aug. 2016** – entered US as student
- **July 2018** – Affirmative asylum application
- **July 2019** – Removal proceedings
- **July 28, 2022 –** IJ denies asylum application

Appeals to Statute & Precedent:

- **8 C.F.R. § 1003.1(d)(3)(iv) (2026):** BIA may take administrative notice of commonly known facts such as current events and the contents of official documents.
- **8 C.F.R. § 1208.13(b)(1):** No presumption of well-founded fear of persecution if no past harm.
- ***Bertrand v. Garland*, 36 F.4th 627, 631 (5th Cir. 2022):** "Persecution refers to harm inflicted either by the government or by private actors whom the government 'is unable or unwilling to control.'" "A government is not 'unable or unwilling' to protect against private violence merely because it has difficulty solving crimes or anticipating future acts of violence." *Id.* at 632.
- ***Sanchez-Amador v. Garland*, 30 F4th 529, 533 (5th Cir. 2022):** same ^^.
- ***Matter of B-R-*, 26 I&N Dec. 119, 121-22 (BIA 2013):** dual citizen needs to prove need for asylum in both places.
- ***Matter of Z-Z-O-*, 26 I&N Dec. 586, 590-91 (BIA 2015):** objectively reasonable fear is a legal determination, and BIA can review that decision de novo.
- ***Matter of Sibrun*, 18 I&N Dec. 354, 358 (BIA 1983):** speculations and conclusional statements are insufficient to establish well-founded fear w/o independent corroboration.

- ***Vasquez-Guerra v. Garland*, 7 F.4th 265, 270 (5th Cir. 2021):** the safety of similarly situated family members in the country of removal undermines a claim of future persecution.
- ***DHS v. Thuraissigiam*, 591 U.S. 103, 113 n.9 (2020):** complaints about delaying the adjudication of meritorious claims.
- ***Matter of O-M-O-*, 28 I&N Dec. 191, 197 (BIA 2021):** "The immigration court system has no more solemn duty than to provide refuge to those facing persecution or torture in their home countries, consistent with the immigration laws."
- ***Matter of S-S-F-M-*, 29 I&N Dec. 207, 209 (A.G. 2025):** asylum is for those whose governments either persecute them or cannot or will not control their persecutors.
- ***Joaquin-Porras v. Gonzales*, 435 F.3d 172, 179-80 (2d Cir. 2006):** abuse of asylum system.
- ***East Bay Sanctuary Covenant v. Trump*, 932 F.3d 742, 754 (9th Cir. 2018):** overburdened system for processing overwhelming number of asylum applications.
- ***Matter of Andrade Jaso and Carbajal Ayala*, 27 I&N Dec. 557, 558 (BIA 2019):** filing a meritless asylum claim is an abuse of the asylum process.
- ***Matter of H-A-A-V-*, 29 IYN Dec. 233, 237-38 (BIA 2025):** pretermission for failing to establish prima facie eligibility.
- ***Matter of O-A-R-G-*, 29 I&N Dec. 30, 36 (BIA 2025):** CAT requires a greater degree of government complicity.
- ***Singh v. Blanche*, 176 F.4th 1139, 1145 (9th Cir. 2026) (citation omitted):** Persecution "is an extreme concept that means something considerably more than discrimination or harassment."
- ***Matter of A-G-O-F-*, 29 I&N Dec. 772, 774 (BIA 2026):** "A government's failure to apprehend and prosecute perpetrators in individual cases is insufficient to establish that a government is unwilling or unable to investigate and punish them." (B-S-A-N- at 151)
- ***Galeas Figueroa v. Att'y Gen. U.S.*, 998 F.3d 77, 90 (3d Cir. 2021):** no relief if government is "willing and able to afford some protection to an individual against harms inflicted by private actors"

Relevant U.S. History: Trump 2.0

- ". . . the expenditure of scarce adjudicatory resources on claims for aliens who do not need protection from the United States ultimately impedes and delays the adjudication of meritorious claims for refugees with nowhere else to go." 148 (internal quotation marks omitted)
- "Congress has long been 'concerned that "[t]he asylum system has been abused by those who seek to use it as a means of 'backdoor' immigration."'"" 149
- "It cannot reasonably be disputed that our country's asylum system is currently overwhelmed with cases." 149

Discussion:

- Respondent did not provide corroborative evidence for the claim that she would be persecuted in France by members of the Gabonese government. 147
- R's two sisters have lived unbothered in France for many years. 147
- Can't meet withholding, because it's a higher bar; nor torture, which is a higher bar than persecution. 148 (This sounds wrong – torture requires a separate examination that does not involve protected grounds.)
- "In adjudicating claims for asylum, we must keep in mind the 'core regulatory purpose of asylum,' which 'is not to provide applicants with a broader choice of safe homelands, but rather to protect refugees with nowhere else to turn.' *Matter of B-R-*, 26 I&N Dec. at 122 (citation modified)." 148
- "Unfortunately, too many aliens with governmental protection readily available to them in their home countries nonetheless abuse the asylum process by using it as a means to remain in the United States." 149
- "In this overwhelmed system, meritless claims distract time, attention, and resources away from meritorious claims and can even cause unwarranted skepticism of asylum applications and the asylum system in general." 149
- That bit about taking administrative notice of commonly known facts? Well, it applies here to how these countries on my list are "recognized for their extensive human rights protections, democratic values, peaceful transfer of power traditions, fair and effective justice systems, and highly developed economies." 150
- "We also note that EU citizens have a right to reside in any other EU country, thus further obviating any claim that they need to seek protection in the United States." 150
- "We recognize that country conditions can and do change over time, and countries may be added or removed from this category of safe countries based on significant governmental changes or other developments impacting individual human rights." 151
- "While her asylum application may not be frivolous in the sense that it does not contain false information, it is nonetheless patently meritless." 152
- "She is free to live in any other country within the EU." 152
- There are other agreements that may end up with the same result as the open-internal-borders-EU: Mercosur Residence Agreement between certain South American countries, and the Trans-Tasman Travel Arrangement between Australia and New Zealand. (And IJs can take these into account when considering discretion.) 154

Commentary:

- Most of this is pontificating. A lot of this is a rehearsal of the rules of mobility in the EU.
- The presumption of meritlessness is hedged: "generally," "typically". 150
- *H-A-A-V-* is invoked for pretermission, now armed with a blacklist of countries (not yet named) that are "democratic" and "highly developed." 150

- Note the repeated misstatement of the CAT elements: it's treated as measuring the same things as asylum and withholding, just with a higher bar. No mention of what makes it a different analysis. 148, 150
- Talk about conclusory statements: "there is simply NO REALISTIC BASIS" to believe anyone could be persecuted in any of these countries. 151
    - ". . . IT IS IMPLAUSIBLE" that you could demonstrate a claim against these countries.
    - R's application is "PATENTLY MERITLESS." 152
- Note that this decision both leaves open the possibility of changing THE LIST and precludes an examination of whether or not a country can be dropped or added. (151)
- Note that the presumption of resettlement in any of the EU countries is qualified by the need to be employed, have health insurance, and be self-sufficient. IOW, you can move around if you can demonstrate wealth. Can we really call this "nearly unfettered rights to reside anywhere within the bloc"?? 154