



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*



5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041

P [REDACTED], K [REDACTED]  
Innovation Law Lab  
333 SW 5th Ave. Ste 200  
Portland OR 97204

**DHS/ICE - OFFICE OF CHIEF COUNSEL - ADL**  
10400 Rancho Road  
Adelanto CA 92301

Name: S [REDACTED] K [REDACTED]

A [REDACTED]

**Date of this Notice: 3/11/2022**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Malphrus, Garry D.

Userteam: Docket

NOT FOR PUBLICATION

U.S. Department of Justice  
Executive Office for Immigration Review  
Board of Immigration Appeals

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MATTER OF:

K [REDACTED] S [REDACTED] A [REDACTED]

Respondent

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**FILED**  
Mar 11, 2022

ON BEHALF OF RESPONDENT: K [REDACTED] P [REDACTED], Esquire

ON BEHALF OF DHS: Christopher R. Brown, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS

On Remand from a Decision of the United States Court of Appeals for the Ninth Circuit

Before: Malphrus, Deputy Chief Appellate Immigration Judge

MALPHRUS, Deputy Chief Appellate Immigration Judge

This case is presently before us pursuant to the June 9, 2021, order of the United States Court of Appeals for the Ninth Circuit granting the government's unopposed motion to remand the case to the Board. On remand, the Department of Homeland Security filed a motion to remand the proceedings to the Immigration Judge. The respondent has not responded. The record will be remanded.

On April 10, 2020, the Board dismissed the respondent's appeal from the Immigration Judge's decision denying his application for asylum and withholding of removal under sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(1)(A) and 1231(b)(3)(A). *Matter of K-S-E-*, 27 I&N Dec. 818 (BIA 2020). In our published decision, we affirmed the Immigration Judge's determination that the respondent, a native and citizen of Haiti, was firmly resettled in Brazil prior to arriving in the United States and was therefore ineligible for asylum because he was subject to the mandatory bar in section 208(b)(2)(A)(vi) of the Act. *Matter of K-S-E-*, 27 I&N Dec. at 822.

Alternatively, we also affirmed the Immigration Judge's determination that the respondent did not demonstrate that he experienced or fears harm from the Haitian Government or from individuals the Government is unable or unwilling to control, and therefore did not meet his burden of proof for asylum or withholding of removal. *Matter of K-S-E-*, 27 I&N Dec. at 824; 8 C.F.R. §§ 1208.13(a), 1208.16(b).

The case was remanded to us for further consideration of whether the respondent had firmly resettled in Brazil, and whether the respondent failed to establish that the government of Haiti was unable or unwilling to control the individuals he fears. Given our limited fact-finding ability, we will remand to the Immigration Judge for further proceedings.

A [REDACTED]

On remand, the Immigration Judge should make any additional fact-findings as may be warranted to address the respondent's assertion that the permanent resident status that he was offered in Brazil, but for which he chose not to apply, was not actually permanent or that he would not have qualified for it had he applied. The Immigration Judge also may engage in any further fact-finding as may be warranted to address under the fourth step of the analysis whether a regulatory exception applies to firm resettlement in this case. In addition, the Immigration Judge may make any additional fact-finding as may be warranted to address any argument that the respondent may have regarding his claim that the Haitian government was unwilling or unable to protect him from the private actors he fears in Haiti.

For these reasons, we will remand the record to the Immigration Judge to further assess the respondent's eligibility for asylum and withholding of removal under the Act. Accordingly, the decision of the Board in this case dated April 10, 2020, will be vacated and the record will be remanded for further proceedings consistent with this decision and the order from the court.

ORDER: The Board's decision of April 10, 2020, is vacated.

FURTHER ORDER: The record is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.