



**2018 UC DAVIS**

**ASYLUM AND REFUGEE LAW**

**NATIONAL MOOT COURT COMPETITION**

---

**OFFICIAL TRANSCRIPT OF THE RECORD**

---

**BRIEF DUE DATE:** February 2, 2018 by 5:00 PM PST

**ORAL ARGUMENT DATE:** March 3 - 4, 2018

© UC Davis School of Law Moot Court Program

IN THE  
***Supreme Court of the United  
States***

---

Yusuf Badr,  
*Petitioner*

v.

United States of America,  
*Respondent*

---

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES  
COURT OF APPEALS FOR THE FOURTEENTH CIRCUIT

Issues on appeal:

- 1) Whether a nexus exists between Badr's alleged persecution & a protected ground?
- 2) Whether there was sufficient evidence to establish that Badr submitted his application timely, meeting the one year requirement?

**\*\*NOTE TO COMPETITORS:** No cases decided, nor legislation passed after June 29, 2017 may be cited or relied upon in either briefs or oral argument.

**\*\*PRONUNCIATION KEY:**

- Yusuf Badr – You-suf Baa-dur
- AlSuria – Al Soo-ree-uh
- Maken Areeb – Muh-ken Uh-ree-b
- Medeenah – Meh-dean-eh
- Hassad Basheer – Ha-saad Bah-sheer

No. 2223-1010

---

**IN THE UNITED STATES COURT OF APPEALS**

**FOR THE FOURTEENTH CIRCUIT**

---

**Yusuf Badr**

**Appellant,**

**v.**

**Attorney General of the United States,**

**Appellee.**

---

**ON APPEAL FROM BOARD OF IMMIGRATION APPEALS**

---

**KHATIB, Circuit Judge, Joined by WAYNE, Circuit Judge:**

## **I. FACTUAL BACKGROUND**

### **A. HISTORICAL BACKGROUND**

The nation of AlSuria has a substantial presence in Middle Eastern affairs. AlSuria's government has been involved with peace talks between Israel and Egypt and has worked with Saudi Arabia on different summits of national importance. The country's population is just over two million people and lies in the outskirts of the Middle East. The major language spoken in AlSuria is Arabic. Since 2012, the nation has seen an uprising and civil war occur within its borders with various factions attempting to oust the AlSurian president, Hassad Basheer. Due to this uprising in AlSuria, the United States President expanded his travel ban to include AlSuria, making it even more difficult for people to enter the United States.

The AlSurian government portrayed AlSuria as a peacekeeper country in the Middle East — from assisting its neighboring countries during times of war to sitting in on peace talks with other countries. Unfortunately, AlSuria's civil war has replaced the country's peacekeeper status with turmoil and rebel groups. One of the strongest rebel groups in AlSuria is known as the Freedom Fighters of AlSuria ("FFA"). Originally, the FFA was backed by Western countries attempting to oust Basheer from power and give AlSuria a rebirth — similar to what happened in Egypt and Yemen during the Arab Spring. Members of the FFA attempted to recruit more and more young AlSurians to their organization, but while also gaining members from other Middle Eastern countries. The FFA has vowed to take Basheer out of power, and it appears that it will not stop until it does so.

The FFA has taken over substantial portions of AlSuria during this turmoil, most notably taking over some parts of the capital, Medeeneh. Of all the rebel groups or other forces in

AlSuria, the FFA has the most power. Other organizations, rebel or otherwise, include the Yalandic Party or the Kordian Forces. Despite these other groups, the FFA's continues to have a stronghold over AlSuria, allowing it to terrorize AlSuria's citizens.

## **B. CASE FACTS**

Yusuf Badr, at the age of twenty, fled AlSuria to come to the United States for safety. All of Badr's family members either passed away or fled their country, causing him to conclude that fleeing to the United States was his best option. In his opinion, AlSuria posed too great a risk for him. Badr alleges that he entered the U.S. illegally in mid-2016, but the Department of Homeland Security ("DHS") did not take notice of Badr until he was stopped by police officers one night in February 2017. The DHS served Badr with a notice to appear, charging him with removability on March 1, 2017. His response to this paperwork was to request asylum.

Badr was represented *pro-bono* by a well-known immigration attorney in Los Angeles, California. His counsel provided the Immigration Judge ("IJ") with documentation regarding the current country conditions and the growing presence of the FFA in every day AlSurian life. Badr testified as to the conditions of AlSuria and his reasons for declaring asylum before the IJ released its opinion.

To plead his case for asylum, Badr alleges that several acts occurred over the period of a year in AlSuria that were based on a protected ground<sup>1</sup> and that such acts amount to past persecution. Badr believes that he was persecuted by the FFA because of his support for Basheer and his regime, and for denouncing the FFA on several occasions. DHS claims that Badr was not targeted on a protected ground because the FFA was only seeking able-bodied men to assist with

---

<sup>1</sup> A protected ground, as defined by statute, is persecution based on religion, political opinion, race, nationality, and membership in a certain social group. 8 U.S.C.A. § 1158(A)(2)(a) (West 2009).

its cause, instead of specifically targeting Badr for his alleged support of Basheer.

Badr alleges that he and his family have been adamant supporters of the Basheer regime since he was a child, and that his family's support grew since the start of the AlSurian civil war. Throughout Badr's neighborhood in Medeeneh, the overwhelming majority of residents are Basheer supporters. At the start of the war, Badr's family pressured Badr to speak to the Kabir Press about his belief that Basheer should remain as president and that he supports all the decisions Basheer has made thus far. The Kabir Press had come to Badr's neighborhood after a press release which stated the FFA was gaining support in the surrounding neighborhoods. The Kabir Press released the names of everyone who spoke to them in this interview and announced that such interviews took place in Medeeneh. After announcing the names on TV, people supporting the FFA harassed Badr any time he was out on the streets in an attempt to gain his allegiance to their cause.

Badr testified to three specific occasions where men, potentially FFA members, harassed him to the point where he felt unsafe. The first alleged incident took place in March 2015. At the time, Badr was on his way to the bazaar in Medeeneh when three supposed members of the FFA followed him into an alleyway. The alleyway was well known in the area as being a shortcut through the neighborhood, though it remains dark and dreary during the evening hours. After entering the alleyway, the alleged FFA members came up from behind Badr and began shouting at him to join their cause or be prepared to die. One of the men wielded a knife and cut Badr's shirt, while the eldest man held his knife up to Badr's throat, telling him to denounce Basheer and his supporters.

The next attack landed Badr in the hospital. Two weeks after the first incident, Badr found himself on the streets at night, running to the last open pharmacy in the city. He needed to

buy medicine for his ailing father — the last member of his family still around in this city. As he carried the bag of medicine on his way back home, two other men, possibly in the FFA, ambushed him. They beat him until his face turned bruised and bloodied. This incident took place once again in the alleyway where Badr had been confronted the first time. During the incident, Badr recalls seeing two police men pass the entrance of the alleyway, but they they did not enter the alley or attempt to aid Badr.

The final incident occurred in late May of 2015, when Badr was visiting the local bazaar with his friend, Ahmed. A group of men came up to the pair, announcing that they were seeking new recruits for the FFA and prominently displayed their weapons on their belt holster. Badr remembers that his friend Ahmed was terrified and did not attempt to flee. Badr tried to get away from the group of men that now surrounded him, but he was thrown to the ground and kicked in the stomach. He claims that other people in the bazaar stopped to see the ruckus, but no one attempted to step in. Ahmed fell to the ground, renounced Basheer, and pledged his allegiance to the FFA. Ahmed was kicked and spit on while he was on the ground. Badr continually denied wanting any affiliation with the group. The men saw this as an act of defiance and stomped on him repeatedly until police officers came and gave orders for everyone to stand down. The officer called in back up officers arrived from around the bazaar and made an arrest of all the FFA members. This final incident with these men caused Badr to flee with his father to Maken Areeb, in Northern AlSurian territory, which is controlled by Basheer and close to Kordian forces.

At the time of his arrival in Maken Areeb, it was an area entirely controlled by Basheer and his military – an area arguably safe for someone who was a Basheer supporter. Badr's father did not survive the move to Maken Areeb leaving Badr alone in this new territory. Despite

securing shelter and employment, Badr only stayed in Maken Areeb for sixth months before fleeing to America. During his time in Maken Areeb, he worked as a blacksmith and lived in a run-down home shared with other young men.

Both parties contend that the violence Badr faced amounted to persecution, but the parties dispute whether Badr was persecuted on a protected ground and whether he reasonably relocated to a safe area in Maken Areeb.

## **II. PROCEDURAL HISTORY**

The IJ denied Badr's application for asylum and his application for withholding of removal. The IJ found the following: 1) Badr was a credible witness; 2) There was insufficient evidence to establish when Badr entered the United States and applied for asylum and he fails to meet an exception to the one year rule; 3) Badr failed to properly establish a nexus between his alleged persecution and a protected ground; 4) the AlSuria government was able and willing to protect Badr from the FFA; 5) Badr was able to reasonably relocate to Maken Areeb in an area controlled by Basheer.

On appeal, the Board of Immigration Appeals (BIA) summarily affirmed the IJ's ruling without an opinion.

## **III. ANALYSIS**

When the Board of Immigration Appeals ("BIA") summarily affirms the IJ's opinion, we find the IJ's opinion to be the "final agency determination." *Elzour v. Aschroft*, 378 F.3d 1143, 1150 (10th Cir. 2004). This court will defer to the factual findings of the final order in applying the substantial evidence standard. *Id.* at 1150. We can only overturn a decision if examining the evidence provided would compel a reasonable fact finder to conclude that the asylum elements have been met. *See I.N.S. v. Elias-Zacarias*, 502 U.S. 478, 481 (1992). In our review, we may

consider direct and circumstantial evidence. *Baballah v. Ashcroft*, 367 F.3d 1067, 1077 (9th Cir. 2003). But, conclusions of law will be reviewed *de novo*. *Patel v. Gonzales*, 432 F.3d 685, 692 (6th Cir. 2005). Our review will examine the evidence in the light that is most favorable to the agency's decision, and draw our inferences in light of said decision. 8 U.S.C.A. § 1252(b)(4)(B) (West 2005).

Persons who are physically present in the United States, despite their alien status, may apply for asylum in accordance with the rules. 8 U.S.C.A. § 1158(a)(1) (West 2009). The Attorney General has the power to grant asylum to an applicant deemed a refugee. *Dolores v. INS*, 772 F.2d 223, 225 (6th Cir. 1985). A person is considered a refugee when that person suffers from persecution or a well-founded fear of persecution on a protect ground. 8 U.S.C.A. § 1101(a)(42)(A) (West 2014). These protected grounds include: race, religion, membership in a particular social group, political opinion, and nationality. *Id.* Asylum applicants must show that she or he suffered from harm that rises to the level of persecution; the persecution occurred due to a protected ground; and the persecution was carried out by a member of the government or an entity that the government is unable or unwilling to control. *Parussimova v. Mukasey*, 555 F.3d 734, 738 (9th Cir. 2009). Whether or not Badr suffered persecution is not an issue on appeal. Rather, it is whether the persecution he suffered was based on a protected ground. Further, whether there was sufficient evidence to establish that Badr met the one year rule for applications must be determined. Finally, this court must make a finding on whether the AlSuria government was unable or unwilling to protect Badr and whether relocation to Maken Areeb would have been reasonable.

**A. BADR DOES NOT MAKE AN ADEQUATE SHOWING THAT COUNTRY CONDITIONS CHANGED SIGNIFICANTLY SINCE HIS DEPARTURE TO WARRANT AN EXCEPTION FOR THE ONE YEAR APPLICATION REQUIREMENT.**

Generally, an asylum applicant must apply for asylum within one year of arrival in the United States. 8 U.S.C.A. § 1158(a)(2)(B) (West 2009). There are some exceptions to this rule, including an exception for changed circumstances which impact the applicant's eligibility for asylum. 8 U.S.C.A. § 1158(a)(2)(D) (West 2009). The applicant can rely on an increased fear or persecution and does not need there to be a new conflict to show changed circumstances. *Vahora v. Holder*, 641 F.3d 1038, 1044 (9th Cir. 2011). The Real ID Act provides us the authority to review the BIA's interpretation of the applicant's changed circumstances. *Qing Li Chen v. Mukasey*, 524 F.3d 1028, 1031 (9th Cir. 2008) (deciding an applicant's change in personal circumstances). Further, we must review this under a substantial evidence standard to find if the BIA was accurate in determining that Badr did not make a showing of changed circumstances. *Vahora*, 641 F.3d at 1042.

Badr failed to provide adequate evidence that he arrived after March 2016, keeping him within the one year requirement for asylum. Therefore, he attempts to rely on an exception to the rule. Badr argues that he has an increased fear of persecution because of reports detailing that the FFA has increased in both size and control over Al Surian territory. When Badr originally left AlSuria, the FFA reportedly only had control over fifteen percent of the country's territory. Now Badr produced reports from both the AlSurian Times and the Kabir Press that show the FFA now has at least a forty percent stronghold. These reports further indicate that their influence is spread across multiple cities in AlSuria — claiming that they are spreading farther than just the Southern region. Further, these reports were based on citizens self-reporting FFA presence in their areas. Both media outlets set up methods for the public to contact and report FFA troops

walking around in their area and harassing citizens. These reports appear to be poll based. Such reports force us to carefully examine whether Badr's application for asylum should be reconsidered. We cannot soundly send someone back to their country of origin without properly examining country conditions. Since Badr only needs to show that he is concerned there will be future persecution, we must consider the type of harm the FFA's power will cause.

Badr's reports show that AlSuria remains under unstable conditions, but the DHS maintains that such reports are inaccurate and false. The DHS produced evidence, a report released by Basheer's government detailing that his regime maintains an eighty percent stronghold over AlSuria. The AlSurian Department of Security released this report in mid 2017, detailing the current state of the country. This report also denies other reports, similar to the ones Badr provided, stating that the FFA is gaining control. Within the report, the Department of Security relays that the reports that other newspapers and organizations have produced are grossly over representing the amount of FFA because it is based on self-reporting from people and that duplicate information is not really taken into consideration. The AlSurian government created these reports based off its military presence and amount of fighting between AlSurian troops and FFA members over a period of three months. From these, it appears that the FFA seems more concentrated in the Southern and Western regions, rather than the Northern regions where Badr was living prior to fleeing. The reports that Badr produced were not reports by Basheer's regime, but rather reports he found online. We have carefully scrutinized these reports and find them to be less credible due to self-reporting than the ones the DHS brought forth. Since Badr's reports lack credibility, we cannot take notice of these alleged changed conditions. Therefore, we cannot find that Badr properly met the exception to the one year requirement.

**B. BADR FAILED TO MEET HIS BURDEN OF PROVING THAT HE WAS PERSECUTED ON ACCOUNT OF HIS POLITICAL SUPPORT OF HASSAD BASHEER.**

To properly meet the requirements for asylum, Badr must demonstrate that his persecution was linked to a protected ground. *Parussimova*, 555 F.3d at 738. The persecution must be on ‘account of’ or ‘because of’ a protected status. *Elias-Zacarias*, 502 U.S. at 482-83. Making this determination requires that the motives of the assailant must be examined. *Parussimova*, 555 F.3d at 739. Victims may face persecution by someone with mixed motivations. *See id.* (applicant alleged her persecution occurred on account of both her religion and ethnicity); *Briones v. I.N.S.*, 175 F.3d 727, 729 (9th Cir. 1999) (en banc) (applicant claimed he became a target for ending his role as an informant and for his political opinion); *Borja v. I.N.S.*, 175 F.3d 732, 736 (9th Cir. 1999) (en banc) (applicant claimed she was persecuted for political opinion and economic reasons); *Singh v. Ilchlert*, 63 F.3d 1501, 1509 (9th Cir. 1995) (where court found that someone may be face persecution for more than one reason, but if one reason meets the statutory requirements, then the requirements are met).

Nonetheless, the Real ID Act has replaced this mixed-motive jurisprudence. The Real ID Act, Pub. L. No. 109-13, div. B, 119 Stat. 231 (2005), pushes the burden onto the plaintiff to demonstrate that he was persecuted and that “at least one central reason” for such persecution being based on a protected status. Section 101(a)(3)(B)(i). Now, applicants must be prepared to show that their protected status was a main reason for their persecution. The BIA interprets this act to mean that “the protected ground cannot play a minor role in the alien’s past mistreatment...[that] is, it cannot be incidental, tangential, superficial, or subordinate to another reason for harm. *Quinteros-Mendoza v. Holder*, 556 F.3d 159, 164 (4th Cir. 2009) (quoting *In Re J-B-N- & S-M-*, 24 I. & N. Dec. 208, 214 (BIA 2007)).

In Badr’s account of events, it appears that he could be targeted either because the FFA

wanted new members or because he supports Basheer. But, Badr fails to make a convincing argument that he supports the Basheer regime enough that it would put him in danger—rather than simply under pressure. This forces us to find that Badr was likely not persecuted on a protected ground, but instead based on his capability of serving with the FFA.

Badr truly lacks any substantial evidence that pinpoints that he was targeted on account of his support of the regime. The men who attacked him only asked him to support their cause. Badr never alleged that they asked him about his support for Basheer. It appears that Badr alleges the attackers only wanted him to join the FFA, but made no mentioning of Basheer. In only two of the attacks, did his attackers demand that Badr pledge his allegiance to the FFA or suffer some consequences. Badr attempts to create a connection between his alleged support for Basheer and his persecution as a means to receive asylum, but fails to make any meaningful representations that his political opinion placed him in harm's way. Rather, a more fitting description of the FFA's behavior is that they wanted young able-bodied men to support their cause.

We find his case to be analogous to *Elias-Zacarias* as well as military conscription cases. In various circuits, courts have held that a person evading his or her military service may establish a well-founded fear of persecution under the following: 1) the person would be subject to severe and disproportionate punishment for evading service on a protected ground; or 2) the person would be forced to partake in inhumane activities. *Milat v. Holder*, 755 F.3d 354, 363 (5th Cir. 2014). Usually, a country's requirement for mandatory military service does not lend itself to persecution, but there are exceptions. *Perez-Garcia v. INS*, 1997 U.S. App. LEXIS 28522, 7 (2nd Cir. 1997). The first exception is when “disproportionately severe punishment would result on account of one of the five protected grounds.” *Id.* The second exception is when

the person would have to perform inhumane conduct as a result of being in the military as required by the government. *Id.*

In *Elias-Zacarias*, the asylum applicant was harassed by guerillas to join his movement and he refused based on a fear that the government would retaliate against him if he sided with the guerrillas. *Elias-Zacarias*, 502 U.S at 480. The court of appeals found that the guerrillas were attempting to fill their ranks and were attacking the applicant as a matter of political opinion, but the Supreme Court disagreed. *Id.* at 483. On final appeal, the Supreme Court reversed and found that the applicant had not submitted any evidence showing the motives of his persecutor. *Id.* Today, we similarly find that the FFA was not attacking Badr due to his political opinion. Rather the FFA was attacking him because they needed more young and able bodied men to mount their attack on the government. We cannot conclude, without further evidence, that the FFA was attacking Badr based on his political opinion.

**C. BADR FAILED TO MEET HIS BURDEN IN PROVING THAT THE ALSURIAN GOVERNMENT WAS UNWILLING OR UNABLE TO PROTECT HIM.**

For an applicant to qualify for asylum, he or she must be persecuted by the government, or by quasi-official group, or persons, or groups that the government is unwilling or unable to control. *See Mgoian v. INS*, 184 F.3d 1029, 1036-37 (9th Cir. 1999). The question of whether the AlSuria government was unable or unwilling to control FFA remains a question of fact. *Ngengwe v. Mukasey*, 543 F.3d 1029, 1036 (8th Cir. 2008). Generally, this is determined when the government either condones the behavior or displays utter helplessness when attempting to protect the victim. *Id.* We review the BIA's decision utilizing the deferential substantial evidence standard. *Ouk v. Gonzales*, 464 F.3d 108, 111 (1st Cir. 2006). By utilizing the substantial evidence standard, we are obligated to uphold factual determinations unless "any reasonable

adjudicator would be compelled to conclude to the contrary.” 8 U.S.C.A. § 1252 (b)(4)(B) (West 2005).

- i. Badr fails to bring forth substantial evidence that the AlSurian government was either unwilling or unable to protect him.

Aside from an applicant showing that he was persecuted on a protected ground, he must also show that the government committed the persecution or the persecution was carried out by actors that the government was either unwilling or unable to control. *Baghdasaryan v. Holder*, 592 F.3d 1018, 1023 (9th Cir. 2010). In cases where the alleged persecution is effectuated by organized groups and not the government, it is either undisputed that the government failed to protect such civilians or there was evidence showing the government could not protect the individual. *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1062 (9th Cir. 2017). If the applicant provides evidence of the government disregarding a plea for assistance, or failing to respond to protection requests, then such evidence strongly indicates its incapacity or unwillingness to protect the applicant. *See Afriyie v. Holder*, 613 F.3d 924, 931 (9th Cir. 2010) (overruled in part by *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051 (9th Cir. 2017) (related to failure of reporting and evidentiary gaps).

In Badr’s case, the FFA is not a government entity, but rather, an assemblage of private citizens. This leads us to analyze whether this case fits the general form, in which the government completely fails to protect the citizen. Here, we are presented with two distinct instances in which police were near the scene of the incident. During his second attack, Badr claims to have seen two police officers walk past the scene and not offer any assistance. In the third attack, in the bazaar, officers arrested the men who were harassing Badr and his companion.

This is problematic because in one instance there is the possibility that the police were unwilling or unable to control these men, while in the other instance the officers were completely

capable of assisting and did so. We are concerned by this, but it is possible that the police officers were unaware that there was an incident going on in the alleyway. Upon questioning, Badr testified that when the members had him surrounded in the alleyway, there was a dumpster as well as piles of trash that could have hidden them from sight. Further, he testified that they were deep in the alleyway. Also, the time of the incident was at night, where visibility generally tends to be low. It is possible that the officers did not see anything that was going on. There are no facts to indicate that the officers were able to see Badr and simply decided to walk away. The dissent disagrees on this point and finds that any reasonable officer would have seen or heard a ruckus taking place in the alley way. We cannot come to the same finding. We are compelled to reconcile these two events and find that the AlSurian government, when informed of an incident, was completely willing and capable of assisting and protecting Badr. Such facts compel us to find that the AlSurian government is both willing and capable of controlling the FFA and its supporters, while offering protection.

Therefore, Badr fails to prove that the AlSurian government was unwilling or unable to control the FFA.

**D. THE EVIDENCE PRESENTED SUPPORTS A FINDING OF REASONABLE RELOCATION TO MAKEN AREEB.**

Asylum may be denied when “[t]he applicant could avoid future persecution by relocating to another part of the applicant’s country of nationality...and under all the circumstances, it would be reasonable to expect the applicant to do so.” 8 C.F.R. §208.13(b)(i)(B) and (b)(ii); *see also Melkonian v. Ashcroft*, 320 F.3d 1061, 1069-70 (9th Cir. 2003). The first inquiry in these situations is whether the applicant could realistically relocate to another area in the applicant’s home country. *Kaiser v. Ashcroft*, 390 F.3d 653, 659 (citing *Knezevic v. Ashcroft*, 367 F.3d 1206, 1214 (9th Cir. 2004)). It must be safe for the applicant to

relocate to another area. *Melkonian*, 320 F.3d at 1070

If this court determines that relocation is possible, we must then examine if it is reasonable. *Id.* “The reasonableness of internal relocation is determined by considering whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and family ties.” *Knezevic*, 367 F.3d at 1214 (citing 8 C.F.R. § 1208.13(b)(3)). If relocation is deemed safe and reasonable, then Badr will not have a well-founded fear of persecution. 8 C.F.R. § 208.13(b)(2)(ii).

When a non-state actor’s reach does not spread over the entire country, relocation is still feasible. *See e.g. Da Silva v. Ashcroft*, 394 F.3d 1, 7-8 (1st Cir. 2005). The initial reports the DHS provided showing the FFA’s stronghold in AlSuria show that their stronghold is concentrated in the south, near the border. These reports were from late 2016, sometime before the start of the new year. Maken Areeb is located in the northern area of AlSuria. The DHS’s reports show that the FFA still maintains an almost non-existent presence in Maken Areeb. Given the FFA’s concentration in the South, Badr does not appear to be in harm’s way if he goes back to AlSuria.

Evidence in the record shows that Badr received gainful employment in Maken Areeb, on the North side of AlSuria, far from where Badr was originally bothered by the FFA. Badr’s gainful employment and ability to find housing shows that relocation would be possible for him in another area of AlSuria. Now, it is important to ensure that people can be reasonably relocated as this court does not seek to unjustly send people back to their country of origin when it would be unreasonable to do so. Badr stated that he moved and remained in Maken Areeb for six months prior to coming to the United States. He does not report any disturbances from anyone in

the FFA during this time, which goes to show that it would be reasonable to send him back to Maken Areeb. This Court can safely assume that if Badr returns to Maken Areeb, he will be able to resume the life that he was building prior to his flight to the United States. Badr has no immediate family ties remaining in AlSuria, but he does not have any ties with anyone in the United States either. We agree with both the DHS and IJ that relocation is reasonable and safe in Maken Areeb.

**AFFIRMED**

**SMITH, Circuit Judge, Dissenting:**

I must respectfully disagree with the majority's holding on several grounds. The majority misinterprets the facts of the record and fails to reasonably assess certain portions of Badr's story. In my review of the record, I find that Badr was persecuted on a protected ground (his political opinion), that the government does not appear to be willing to protect Badr, and that reasonable relocation is highly questionable.

**A. BADR PRESENTS A NEXUS BETWEEN HIS PERSECUTION AND A PROTECTED GROUND.**

The majority's analysis failed to recognize that there is a nexus between Badr's persecution and a protected ground. Despite the limitation that we must use a substantial evidence standard upon review, this court is not bound to uphold a BIA's decision when such a decision is "manifestly contrary to law," *Castellano-Chacon v. I.N.S.*, 341 F.3d 533, 545 (6th Cir. 2003) (overruled on other grounds). The BIA and the majority misconstrued the facts in such a manner that they failed to properly recognize the clearly established nexus between Badr's support of Basheer and his subsequent harassment. Persecution based on one's political

opinion is one of five protected grounds for asylum. 8 U.S.C.A. § 1158(b)(1)(B)(i) (West 2009). How the majority and the BIA failed to see this nexus baffles me.

From his testimony, it appears that Badr was a Basheer supporter from a young age and was not merely influenced by his father to say so publicly. Badr testified that he went on national TV to share his support for Basheer. The IJ's credibility determination of the applicant is conclusive, so long as a reasonable fact finder would not find otherwise. *Yang v. United States AG*, 418 F.3d 1198, 1201 (11th Cir. 2005) (citing *Fahim v. United State Attorney Gen.*, 278 F.3d 1216, 1218 (11th Cir. 2002)). Given the credibility of his testimony, the majority should have accepted his support for Basheer as true, rather than question its sincerity.

This failure to find that Badr genuinely supported Basheer leads both the majority and BIA to rely far too heavily on Badr's testimony stating that he was pressured by his family to speak to the media in support of Basheer. What the majority fails take into account is the cultural norms of people in AlSuria. People in these communities are highly nationalistic and typically show support for their government. The majority seems to assume that Badr had a false sense of nationalism, but they disregard his cultural background and practice. In light of this, there was a nexus between Badr's persecution and his support of Basheer. In two of the attacks against Badr, the men who attacked him were attempting to gain his allegiance to the FFA. If he was already a supporter of the FFA or lacked support for Basheer's regime, they would not have treated him in the manner that they did.

#### **B. THE REPORTS OF THE FFA'S STRONGHOLD LACKS CREDIBILITY.**

When considering the changed country conditions, the majority gives far too much credibility to the government reports presented by the DHS. The DHS produced reports released by the AlSurian government indicating that the FFA's stronghold was waning, but Badr presented directly contradicting reports. These reports released by the AlSurian government lack

credibility simply because the AlSurian government has an incentive to show that the FFA is losing stronghold in AlSuria. The reports indicate that the government controls eighty percent of AlSuria's territory, more control than when Badr left the country. This is highly suspect given the discrepancy between these numbers and the numbers highlighted in Badr's reports from the AlSurian Times and Kabir Press. The majority fails to consider that the AlSurian government may downplay how much control the FFA has and how little control the AlSurian government does. Such an admission would be an embarrassment to the AlSurian government.

The majority also fails to consider and give credibility to the reports that Badr presents. Badr presented different reports into evidence from multiple local newspapers that clearly depicted the government losing to the FFA. The reports demonstrated that the FFA maintained control over forty percent of the country, a dramatic increase from when Badr left AlSuria. Some may believe that reports based on self-reporting are inaccurate, but in fact, inquiring within the community brings about honest answers. All around the globe, newspapers use polls and opinions to create reliable data, so the majority should have given these reports more credibility than it did. Further, the FFA was originally controlling just fifteen percent of AlSuria's territory, reports indicate the FFA now controls up to half of the country. This is sufficiently disturbing to find that country conditions have altered and that Badr should therefore be allowed an exception to the one year rule for asylum application.

**C. THE ALSURIAN GOVERNMENT IS NOT WILLING TO PROTECT BADR WHEN THERE IS NO AUDIENCE WITNESSING IT PUNISHING MEMBERS OF THE FFA.**

If a state fails to take action or does not properly respond to a plea for protection, then there is a strong indication that the government is unwilling or unable to provide the applicant with adequate protection. *See Afriyie v. Holder*, 613 F.3d 924, 931 (9th Cir. 2010) (overruled on other grounds by *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, (9th Cir. 2017)). Badr testifies

as to two occasions where officers witnessed his harassment, yet the officers did not save him in both situations. Badr's second attack took place in an alleyway. During this attack, officers walked by and did not assist him, but in the other, the officers assisted them because it occurred in a more public setting. The majority speculates about what the officers did or did not see when they walked passed the alleyway. Of course, one must take into consideration that it was late in the evening and arguably dark, but it is unlikely that a beating would take place silently.

The majority should not rely on the government only protecting Badr in the alleyway, as the government made no attempt to assist him when he was trapped in the alleyway with members of the FFA. It is far too plausible that the government is willing to offer protection to Badr only when other citizens are watching. The majority should not have placed so much fail in the officers and instead considered other possibilities.

**D. REASONABLE RELOCATION TO MAKEN AREEB IS QUESTIONABLE ON ACCOUNT OF POLITICAL INSTABILITY.**

I cannot agree with the majority's decision because there is a significant amount of evidence that weighs against Badr's ability to safely and reasonably relocate to Maken Areeb. The evidence presented by the conflicting reports shows that there may be a wide flux in the FFA's control over AlSuria—potentially putting Badr in harm's way. The court should not aspire to put an asylum applicant in harm's way by sending him back to a country that remains unsafe and unstable. Again, the standard for such cases is that the applicant can reasonably *and* safely relocate. *See Boer-Sedano v. Gonzales*, 418 F.3d 1082, 1090-91 (9th Cir. 2005) (listing some of the non-exhaustive factors the IJ can consider including civil strife, serious harm, country infrastructure, etc). I understand the majority's putting weight in the fact that Badr lived in Maken Areeb for six months while finding housing and securing employment, but six months is not enough time to establish safety or reasonability of relocation. The home Badr did find was

run down and shared with others. Also, it is important to note that Badr and his housemates were ripe targets for the FFA. Badr testified that he lived with six other young men in their run-down home. The FFA could not only target them because of their age and gender, but also because of societal status. The FFA has reportedly has gone after men from poorer backgrounds. If Badr had truly established himself in Maken Areeb for longer than six months, I would be more inclined to side with the majority. These facts should be examined in their totality. This court should be guarded against unjustly returning people to their country of origin when doing so would pose a clear threat to them. For Badr, it does.

Therefore, I respectfully dissent with the majority holding.