

# Restrictions on Asylum

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# Safe Third Country

In December 2004, the United States and Canada agreed to begin the implementation of the Safe Third Country Agreement between the two countries.

As a result, most asylum-seekers must apply for asylum in whichever of these two countries they land in first. That is, an asylum-seeker who travels through the United States and wishes to seek asylum at the Canadian land border will be turned back and told to pursue their claim in the United States, and vice versa. If an asylum applicant loses their claim in the United States and hopes to file a new claim in Canada, as was fairly common a few years ago, they will be unable to do so.

There are several exceptions to the Safe Third Country Agreement. These include:

- Applicants seeking asylum within the borders of the visa country. The Agreement only applies along the land border; those who enter by air or sea may still seek asylum in the other country;
- Unaccompanied minors.

For all others who do not fall within one of the above exceptions, they can only pursue asylum in the country in which they first landed.

This Manual is intended to provide information to attorneys and accredited representatives. It is not intended as legal advice. Asylum seekers should speak with qualified attorneys before applying.

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The information contained herein is for reference only and may not be up to date. It does not constitute legal advice. You should always consult an

**attorney regarding your matter.**

# Safe Third Countries

## Dual Citizens

**Zepeda-Lopez, et al. v. Garland, No. 19-145 (2d Cir. 2022)**

### Case Summary

Petitioners sought review of a December 14, 2018, decision of the Board of Immigration Appeals (the "BIA") affirming a decision of an Immigration Judge (the "IJ") denying asylum, withholding of removal, and relief under the Convention Against Torture ("CAT").

The Second Circuit granted Petitioners' petition for review and held that to qualify as a "refugee" under the INA, a dual national asylum applicant need only show persecution in any singular country of nationality. The court explained that to be eligible for asylum and withholding of removal, an individual must be a "refugee." 8 U.S.C. Section 1158(b)(1)(A). But this is only one step in the asylum process. Even if an individual is a refugee, there are other bars to asylum, see 8 U.S.C. Sections 1158(a)(2) (exceptions to authority to apply for asylum), 1158(b)(2) (exceptions to eligibility for asylum), and even assuming all bars are overcome, the decision of whether to grant a particular asylum application is still a matter of discretion for the Attorney General. Further, the court held that to be considered a "refugee" under Section 1101(a)(42)(A), a dual national need only show persecution in any singular country of nationality. Accordingly, the court granted the petition for review, vacated the BIA's December 14, 2018, decision, and remanded to the BIA for further proceedings in accordance with the proper legal standard.

**As a general matter, to be eligible for asylum and withholding of removal, an individual must be a "refugee." 8 U.S.C. § 1158(b)(1)(A). But this is only one step in the asylum process. Even if an individual is a refugee, there are other bars to asylum, see 8 U.S.C. §§ 1158(a)(2) (exceptions to authority to apply for asylum), 1158(b)(2) (exceptions to eligibility for asylum), and even assuming all bars are overcome, the decision whether to grant a particular asylum application is still a matter of discretion for the Attorney General. See, e.g., *Ojo v. Garland*, 25 F.4th 152, 163 (2d Cir. 2022). Here, the IJ denied asylum and withholding of removal to all Petitioners at the initial step, concluding that they did not meet the definition of refugee. The IJ found that Petitioners did not meet the definition of refugee because of what it described as the "Dual Nationality Bar to Asylum." Cert. Admin. R. at 139. In doing so, the IJ relied on *Matter of B-R-*, which interpreted<sup>5</sup> the INA to require that a dual national asylum applicant demonstrate persecution in both countries of nationality to qualify as a refugee. 26 I. & N. Dec. 119, 121 (B.I.A. 2013). The IJ found that Petitioners made the necessary showing as to Honduras -- but not as to Nicaragua -- and therefore were not "refugees" under 8 U.S.C. § 1101(a)(42)(A). The BIA dismissed Petitioners' appeal, which requested, in part, that the BIA overrule *Matter of B-R-*. We hold that to be considered a "refugee" under § 1101(a)(42)(A), a dual national need only show persecution in any singular country of nationality.**

**[FULL DECISION](#)**

# Failure to Report

The Second Circuit has remanded an asylum claim for a Honduran woman who had been the victim of family violence. “The agency reasonably relied in part on Castellanos-Ventura’s failure to report. But it failed to consider whether it would have been ‘futile or dangerous for an abused child,’ as Castellanos-Ventura was during much of her abuse, ‘to seek protection from the authorities.’”

The full text of *Castellanos-Ventura v. Garland* can be found here:

[https://ww3.ca2.uscourts.gov/decisions/isysquery/ac1b6a99-f14d-423b-a6e6-c89990596c3c/4/doc/21-6293\\_opn.pdf](https://ww3.ca2.uscourts.gov/decisions/isysquery/ac1b6a99-f14d-423b-a6e6-c89990596c3c/4/doc/21-6293_opn.pdf)