



BIA Addresses How Asylum Applicants Can Show Government “Unable or Unwilling” to Protect From Harm by Private Actors

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The Board of Immigration Appeals (BIA), in a precedential decision on asylum law, has provided more guidance on how asylum applicants can meet the requirements of showing that a government is “unable or unwilling” to protect them from harm by private actors. [Matter of C-G-T-](#), 28 I&N Dec. 740 (BIA 2023). The appeal in *C-G-T-* was brought by a gay, HIV-positive man from the Dominican Republic. The respondent testified that he was physically and verbally abused by his father from a young age based on his sexual orientation. Although the respondent never told his father that he was gay when he lived in the Dominican Republic, he testified that his father called him a girl and targeted him for particularly harsh treatment.

The Immigration Judge (IJ) denied the case based on the untimely filing of the asylum application, on the failure of the asylum applicant to establish a nexus to a protected ground because the father did not know he was gay when abusing him, on the respondent’s failure to show that the government was unable or unwilling to protect him from harm, and because no one in the Dominican Republic, besides the applicant’s father, would know that he was gay and HIV positive.

The BIA affirmed the denial of the asylum application as untimely and thus considered only the respondent's request for withholding of removal. However, the BIA reversed the IJ's other findings as to eligibility for protection.

First, the BIA found that the IJ did not properly address all the evidence establishing the respondent's father's reasons for harming him, including the multiple declarations stating that the respondent was singled out for abuse because the father believed him to be gay, the respondent's testimony that his father called him a girl, and the father's frequent expressions of animus towards gay people.

Second, the BIA found that the IJ had not properly considered the respondent's young age when imposing a reporting requirement on the child as to the father's abuse. The BIA noted that a failure to report harm is not necessarily fatal to a claim of persecution if the reporting would have been futile or dangerous. Multiple circuit courts have recognized that children may not be able to articulate their fear or approach law enforcement officials in the same way that an adult would. When that abuse comes from a parent or relative, any attempt to report may make the child's circumstances worse. Given these factors, the BIA remanded the matter to the IJ to consider all relevant evidence regarding whether the government was unable or unwilling to protect the respondent, including the respondent's testimony that children do not generally report abuse in the Dominican Republic and that his father would have killed him had he reported the abuse. The BIA emphasized that determining whether it was reasonable for the respondent not to seek help from the authorities in his own country is a fact-based inquiry.

Finally, the BIA reversed the IJ's finding that the respondent would not be harmed in the Dominican Republic because no one besides his father knew he was gay. The BIA noted that the respondent should not be forced to avoid harm by hiding his sexual orientation. Adjudicators should not expect a respondent to conceal his sexual orientation if removed to his home country.

The decision in *C-G-T* reaches a common-sense result and may be helpful for practitioners to cite when preparing briefs addressing asylum claims based on child abuse or sexual orientation. The BIA's emphasis on considering the reasonableness of reporting from the perspective of a child is an important one. However, practitioners should not rest on the child's young age alone when arguing for an exception for a failure to report, as the BIA continues to emphasize that this determination is always a fact-specific inquiry. Therefore, in cases where the persecution is carried out by a private actor against a child, practitioners must document why specifically it would be unreasonable to have expected that child to report the abuse to the authorities. While the asylum applicant's testimony that reporting would be futile or dangerous can be helpful, such testimony should not stand on its own. Rather, practitioners should document via country conditions reports, declarations, or expert testimony how authorities in a particular country would view the reporting of abuse by private actors and whether they would have come to the child's assistance had the abuse been reported.

The BIA also emphasizes that asylum applicants cannot be expected to hide their protected characteristics to avoid harm in their home country. While such a holding is not new, it appears that some adjudicators need reminding of this important point. While the case at hand involved sexual orientation, the same reasoning also extends to political activities and religious practices — a person should not be forced to change, suppress, or conceal something so fundamental to their identity and conscience simply to avoid persecution.

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Posted on March 27, 2026

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