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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE

(b) (6)

ON BEHALF OF RESPONDENT:

Margarita Silva Esq.
M Silva Law Firm PLC

(b) (6)

IN THE MATTER OF:

(b)(6)

FILE NO.: A(b) (6)

ORDER OF THE IMMIGRATION JUDGE

A Motion to Dismiss Without Prejudice has been filed in the above entitled matter(s).
Upon due consideration, IT IS HEREBY ORDERED that the Motion be

[X] **GRANTED** [ ] **DENIED** [ ] **DEFERRED**

LAMONTE S. FREERKS
Immigration Judge
Date: 8/12/13

Appeal:
Appeal Due By:

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) Date: JUN 29 2010

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Robert B. Jobe, Esquire

ON BEHALF OF DHS: Maria N. Bjornerud
Senior Attorney

CHARGE:

Notice: Sec. 212(a)(2)(A)(i)(I), I&N Act [8 U.S.C. § 1181(a)(2)(A)(i)(I)] - Crime involving moral turpitude

APPLICATION: Asylum; withholding of removal; Convention Against Torture

This case was last before the Board on June 15, 2006, when we sustained an appeal of the Department of Homeland Security ("the DHS") to an Immigration Judge's decision granting the respondent's application for relief pursuant to the Convention Against Torture.[1] On two prior occasions, the Board vacated grants of asylum entered by an Immigration Judge in connection with harm experienced by the respondent's relatives in Haiti and in relation to his own fear of future harm in that country. On (b) (6), the United States Court of Appeals for the (b)(6) remanded the case to the Board for further analysis as to the respondent's claim. (b) (6) *v. Holder*, (b) (6) In so doing, the (b) (6) noted that "all of the Board's prior decisions leading up to its final decision are properly before us in this proceeding." *Id.* at (b) (6)

As background, the respondent is a native and citizen of Haiti who was granted asylum in (b) (6) (b) (6) based on, *inter alia*, "his and his family's support of Jean Bertrand Aristide" and the killing of certain family members during a September 1991 coup that overthrew Aristide. *See* Board's September 8, 2004, Order. Pursuant to a (b) (6) conviction in (b) (6) for assault, the respondent was placed into removal proceedings and he again applied for asylum, which was granted by an Immigration Judge in December 2003. *Id.* Because the Board determined that the past grant of asylum was based on a well-founded fear, and taking into account the respondent's return trips to Haiti and the change in country conditions, in September 2004 we vacated the grant of asylum and remanded the matter for further proceedings. *Id.*

[1] We note that because the original record of proceedings could not be located, a record was recreated using the certified administrative record. The recreation of this record had no impact on our adjudication of this appeal.

(b) (6)

Subsequent proceedings saw the Immigration Judge again enter a grant of asylum on December 16, 2004, and the Board again vacate this grant of relief on November 21, 2005. *See* Board's November 21, 2005, Order (finding a lack of evidence that the respondent would be singled out for persecution because of his family's support of Aristide). Further proceedings included an Immigration Judge's grant of relief pursuant to the Convention Against Torture on January 25, 2006, and the Board's reversal of this grant on June 15, 2006. *See* Board's June 15, 2006, Order (finding that severe prison conditions in Haiti, without more, do not support a finding that the respondent would be the target of treatment specifically intended to torture him).

In its order remanding this matter to the Board, the (b) (6) stated that the Board "engaged in its own factfinding" as to key issues that supported the respondent's claim for relief, including issues that went to whether the respondent suffered past persecution, the motive of those who targeted the respondent's family members, current country conditions, and whether relocation was reasonable under the circumstances. *See* (b) (6) *v. Holder, supra*, at (b) (6) All of the Board's prior orders in this matter were vacated. *Id.* at (b) (6)

In a brief addressing the (b) (6) remand, the DHS requests that this Board remand this matter so that the Immigration Judge can address, in the first instance, several questions of fact, including (1) whether the respondent was an intended target of persecution during the September 1991 attack on this home, (2) whether the Ton Ton Macoutes were responsible for killing the respondent's two older brothers, (3) whether the deaths of the respondent's two older brothers were tied to their work for Lavalas, and (4) whether the murder of the respondent's paternal aunt was tied to her political involvement with Lavalas. *See* DHS's Brief at 8. The respondent, too, recognizes that factual findings as to these specific issues are crucial to the adjudication of this appeal, although the respondent argues that the existing Immigration Judge orders in this case make sufficient factual findings on these issues. Respondent's Brief at 4-10.

After considering the (b) (6) order and the parties' position on remand, we will remand this matter for further findings as to the above-noted factual issues. A mere determination that the respondent testified credibly as to the fate of his relatives does not necessarily resolve the more complicated issues of why the family was targeted, whether the respondent was, in fact, a target, and whether the entirety of the respondent's past experience constitutes past persecution–as to him–on account of a protected ground. These issues should be resolved by an Immigration Judge in the first instance and should be based on clear factual findings. Furthermore, the Immigration Judge should make findings on any resulting legal issues that arise from remand, so that we can conduct appellate review on the entire record, if applicable.

Accordingly, the following order will be entered.

ORDER: The record is remanded for further proceedings consistent with this order.

FOR THE BOARD