UNITED STATES IMMIGRATION COURT

IN THE REMOVAL CASE OF (b) (6)
Alien # (b) (6)
Alien Name: (b) (6)
RESPONDENT

ORDERS

This is a memorandum of the Court's Decision and Orders entered on **June 7, 2013.**
This memorandum is solely for the convenience of the parties.
The oral or written Findings, Decision and Orders is the official opinion in this case.
( ) Both parties waived issuance of a formal oral decision in the case.

[X] The respondent was ordered REMOVED from the United States to Ethiopia, a/k/a native Eritrea in absentia.

[ ] Respondent's application for VOLUNTARY DEPARTURE was DENIED and respondent was ordered removed to _____, in the alternative to _____.

[ ] Respondent's application for VOLUNTARY DEPARTURE was GRANTED until _____, upon posting a voluntary departure bond in the amount of $_____ to DHS within five business days from the date of this Order, with an alternate Order of removal to _____ or _____. Respondent shall present to DHS within ( ) thirty days ( ) sixty days from the date of this Order, all necessary travel documents for voluntary departure.

[ ] Respondent's application for ASYLUM was
( ) granted ( ) denied ( ) withdrawn with prejudice.
( ) subject to the ANNUAL CAP under the INA section 207(a)(5).
( ) Respondent knowingly filed a FRIVOLOUS asylum application.

[ ] Respondent's application for WITHHOLDING of removal under INA section 241(b) (3) was
( ) granted ( ) denied ( ) withdrawn with prejudice.

[ ] Respondent's application for WITHHOLDING of removal under the Torture Convention was
( ) granted ( ) denied ( ) withdrawn with prejudice.

[X] Respondent's application for DEFERRAL of removal under the Torture Convention was
( ) granted [X] denied ( ) withdrawn with prejudice.

[ ] Respondent's application for CANCELLATION of removal under
section ( ) 203(b) of NACARA, ( ) 240A(a) ( ) 240A(b)(1) ( ) 240A(b)(2) of the INA, was
( ) granted ( ) denied ( ) withdrawn with prejudice.
If granted, it was ordered that the DHS issue all appropriate documents necessary to give effect to this Order.
Respondent ( ) is ( ) is not subject to the ANNUAL CAP under INA section 240A(e).

[ ] Respondent's application for a WAIVER under the INA section _____ was
( ) granted ( ) denied ( ) withdrawn or ( ) other _____.
( ) The conditions imposed by INA section 216 on the respondent's permanent resident status were removed.

[ ] Respondent's application for ADJUSTMENT of status under section _____ of the
( ) INA ( ) NACARA ( ) _____ was
( ) granted ( ) denied ( ) withdrawn with prejudice.
( ) granted on a conditional basis under § 216 of the INA.
If granted, it was ordered that DHS issue all appropriate documents necessary to give effect to this Order.

Alien Number: (b) (6) **Alien Name:** (b) (6)

[ ] Respondent's status was RESCINDED pursuant to the INA section 246.

[ ] Respondent's motion to WITHDRAW his application for admission was ( ) granted ( ) denied.
If the respondent fails to abide by any of the conditions directed by the district director of DHS, then the alternate order of removal shall become immediately effective without further notice or proceedings: the respondent shall be removed from the United States to _____.

[ ] Respondent was ADMITTED as a _____ until _____. As a condition of admission, the respondent was ordered to post a $ _____ bond.

[ ] Case was ( ) TERMINATED ( ) with ( ) without prejudice ( ) ADMINISTRATIVELY CLOSED.

[ ] Respondent was orally advised of the LIMITATION on discretionary relief and consequences for failure to depart as ordered.
[ ] If you fail to voluntarily depart when and as required, you shall be subject to civil money penalty of at least $1,000, but not more than $5,000, and be ineligible for a period of 10 years for any further relief under INA sections 240A, 240B, 245, and 248 (INA Section 240B(d)).
[ ] If you are under a final order of removal, and if you willfully fail or refuse to 1) depart when and as required, 2) make timely application in good faith for any documents necessary for departure, or 3) present yourself for removal at the time and place required, or, if you conspire to or take any action designed to prevent or hamper your departure, you shall be subject to civil money penalty of up to $500 for each day under such violation. (INA section 274D(a)). If you are removable pursuant to INA 237(a), then you shall further be fined and/or imprisoned for up to 10 years. (INA section 243(a)(1)).

[X] Other: Final Order

_____

_____

STEVEN F. DAY, Immigration Judge
Date: June 7, 2013

APPEAL: WAIVED -- RESERVED

BY: RESPONDENT -- DHS -- BOTH

DUE BY: _____/_____/_____

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: [X] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [X] DHS
DATE: Jun 7, 2013 BY: [ ]COURT STAFF _____ [X]JUDGE
Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

Y2

File: (b) (6) Date:

In re: (b) (6)

MAR 14 2007

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Laura Murray Tjan, Esquire

ON BEHALF OF DHS: John M. Furlong, Jr.
Assistant Chief Counsel

DEPARTMENT OF JUSTICE
2007 MAR 22 PM 1:55
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
BOSTON, MASSACHUSETTS

CHARGE:

Notice: Sec. 237(a)(2)(B)(i), I&N Act [8 U.S.C. § 1227(a)(2)(B)(i)] - Convicted of controlled substance violation

Lodged: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] - Convicted of aggravated felony

APPLICATION: Asylum, withholding of removal, Convention Against

This case was last before the Board on May 27, 2005, when we vacated an Immigration Judge's decision finding that the respondent, who was convicted of two offenses of possession of crack cocaine, was not an alien convicted of an aggravated felony, and therefore was eligible for asylum, withholding of removal, protection under the Convention Against Torture, and cancellation of removal. We found that the respondent was convicted of an aggravated felony and as such, he was ineligible for the relief of asylum and cancellation of removal under sections 208 and 240A(a) of the Immigration and Nationality Act. We also vacated the Immigration Judge's October 8, 2004, grant of withholding of removal in the respondent's favor. On (b) (6) he United States Court of Appeals for the (b) (6) remanded the case to the Board, holding that the respondent was not removable as an aggravated felon.[1] The (b) (6) (b) (6) also directed that the Board reconsider the respondent's eligibility for withholding of removal to Eritrea under section 241(b)(3) of the Act. *See* (b) (6) *v. Gonzales*, (b) (6) The record will be remanded to the Immigration Judge for further proceedings.

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[1] This decision is binding on us notwithstanding it precedes controlling precedent from the United States Supreme Court. *See Lopez v. Gonzales*, __ U.S. __, 127 S. Ct. 625, 630 n.6 (2006) (recognizing that recidivist possession of a controlled substance falls within the definition of a drug trafficking crime). In this regard, the *Lopez* decision does not contain a clear indication whether it would follow the interpretation of the elements of a recidivist conviction outlined in (b) (6) *v. Gonzales*, *supra*. Compare *United States v. Sanchez-Villalobos*, 412 F3d 572 (5th Cir. 2005).

(b) (6)

We note that in our decision on appeal, the respondent's eligibility for asylum, withholding of removal, and cancellation of removal were at issue. We found that the respondent had waived appeal of the Immigration Judge's denial of his claim for relief under the Convention Against Torture. With regard to that claim, the (b) (6) stated that our "bar against untimely appeals" was inapplicable to the respondent and that the respondent, proceeding *pro se* below, did not "knowingly and intelligently waive" appeal of the issue. Accordingly, the respondent's eligibility for relief under the Convention Against Torture is also currently before us.

On the merits of the respondent's claims, we again find that the record below does not support a claim that the respondent would be persecuted in Eritrea on account of his religion (i.e., an imputed claim based upon the fact that his birth mother was a Jehovah's Witness). *See* Tr. at 68-69. In our view, the record also bears little support for the Immigration Judge's finding–as summarized by the (b) (6) that the respondent, by "continu[ing] to seek asylum even after becoming removable . . . would likely be targeted for persecution" as one deemed "sympathetic . . . to critics of the government." (b) (6) *v. Gonzales, supra*, at 87. In fact, the respondent did not articulate this claim in his written asylum application or during testimony. *See* Exh. 7, Tr. at 49-71. The background evidence of record does not reflect whether persons born in what is now Eritrea (and was formerly part of Ethiopia) can be repatriated to Eritrea at all, let alone whether those who sought asylum elsewhere are treated with suspicion or harm upon return to Eritrea. *See, e.g.*, Exh. 8; Tr. at 5-8, 13-14, 57, 67-68, 71. To be sure, the country information in the record concerning Eritrea–mainly covering events up to the end of the year 2003–reflects a nation in turmoil as a result of political events, drought, and poverty (Exh. 8). However, there are gaps in the evidence that are necessary to fill to support any finding that the respondent would be imprisoned or targeted for harm upon a return to Eritrea. For that reason, we find a remand necessary to allow the respondent to attempt to expand on the theory that his application for asylum here in the United States would be perceived as the expression of an anti-government political opinion in Eritrea, and for both sides to supplement the record with regard to the respondent's eligibility for, and entitlement to, relief from removal.

On remand, the parties also will have an opportunity to supplement the record with regard to the respondent's fitness for a grant of cancellation of removal. The Immigration Judge's decision of record on this form of relief does not fully consider all of the relevant positive and negative equities set forth in our decision in *Matter of Marin*, 16 I&N Dec. 581 (BIA 1978),[2] and also necessarily does not include any consideration of factors that may have arisen since the decision was rendered below.

Accordingly, the following order will be entered.

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[2] For example, the Immigration Judge's decision makes no finding with regard to whether the respondent has been "rehabilitated" and does not give adequate weight to the recency of the respondent's second conviction for possession of crack cocaine, instead focusing on the fact that the record reflected a "five-year hiatus" on criminal activity by the respondent from 1997 to 2002 (I.J. at 12).

(b) (6)

ORDER: The record is remanded to the Immigration Court for further proceedings consistent with this order.

FOR THE BOARD

UNITED STATES IMMIGRATION COURT

(b) (6)

IN THE REMOVAL CASE OF

(b) (6)

RESPONDENT

CASE NO. (b) (6)

ORDERS

[✓] This is a memorandum of the Court's Decision and Orders entered on 6.21.07. This memorandum is solely for the convenience of the parties. The oral or written Findings, Decision and Orders is the official opinion in this case. (✓) Both parties waived issuance of a formal oral decision in the case.

[ ] The respondent was ordered REMOVED from the United States to _____ ( ) in absentia.

[ ] Respondent's application for VOLUNTARY DEPARTURE was DENIED and respondent was ordered removed to _____, in the alternative to _____.

[ ] Respondent's application for VOLUNTARY DEPARTURE was GRANTED until _____, upon posting a voluntary departure bond in the amount of $_____ to INS within five business days from the date of this Order, with an alternate Order of removal to _____ or _____. Respondent shall present to INS within ( ) thirty days ( ) sixty days from the date of this Order, all necessary travel documents for voluntary departure.

[✓] Respondent's application for ASYLUM was ( ) granted ( ) denied (✓) withdrawn ~~with prejudice~~ without prejudice ( ) subject to the ANNUAL CAP under the INA section 207(a)(5). ( ) Respondent knowingly filed a FRIVOLOUS asylum application.

[✓] Respondent's application for WITHHOLDING of removal under INA section 241(b)(3) was ( ) granted ( ) denied (✓) withdrawn ~~with prejudice~~ without prejudice.

[ ] Respondent's application for WITHHOLDING of removal under the Torture Convention was ( ) granted ( ) denied ( ) withdrawn with prejudice.

[ ] Respondent's application for DEFERRAL of removal under the Torture Convention was ( ) granted ( ) denied ( ) withdrawn with prejudice.

[ ] Respondent's application for CANCELLATION of removal under section ( ) 203(b) of NACARA, ( ) 240A(a) ( ) 240A(b)(1) ( ) 240A(b)(2) of the INA, was ( ) granted ( ) denied ( ) withdrawn with prejudice. If granted, it was ordered that the INS issue all appropriate documents necessary to give effect to this Order. Respondent ( ) is ( ) is not subject to the ANNUAL CAP under INA section 240A(e).

[ ] Respondent's application for a WAIVER under the INA section _____ was ( ) granted ( ) denied ( ) withdrawn or ( ) other _____. ( ) The conditions imposed by INA section 216 on the repondent's permanent resident status were removed.

[ ] Respondent's application for ADJUSTMENT of status under section _____ of the ( ) INA ( ) NACARA ( ) _____ was ( ) granted ( ) denied ( ) withdrawn with prejudice. If granted, it was ordered that INS issue all appropriate documents necessary to give effect to this Order.

9MJ

CASE NUMBER: (b) (6) RESPONDENT: (b) (6)

[ ] Respondent's status was RESCINDED pursuant to the INA section 246.
[ ] Respondent's motion to WITHDRAW his application for admission was ( ) granted ( ) denied. If the respondent fails to abide by any of the conditions directed by the district director of INS, then the alternate Order of removal shall become immediately effective without further notice or proceedings: the respondent shall be removed from the United States to _____.
[ ] Respondent was ADMITTED as a _____ until _____. As a condition of admission, the respondent was ordered to post a $ _____ bond.
[ ] Case was ( ) TERMINATED ( ) with ( ) without prejudice ( ) ADMINISTRATIVELY CLOSED.
[ ] Respondent was orally advised of the LIMITATION on discretionary relief and consequences for failure to depart as ordered.
[ ] If you fail to voluntarily depart when and as required, you shall be subject to civil money penalty of at least $1,000, but not more than $5,000, and be ineligible for a period of 10 years for any further relief under INA sections 240A, 240B, 245, and 248 (INA Section 240B(d)).
[ ] If you are under a final order of removal, and if you willfully fail or refuse to 1) depart when and as required, 2) make timely application in good faith for any documents necessary for departure, or 3) present yourself for removal at the time and place required, or, if you conspire to or take any action designed to prevent or hamper your departure, you shall be subject to civil money penalty of up to $500 for each day under such violation. (INA section 274D(a)). If you are removable pursuant to INA 237(a), then you shall further be fined and/or imprisoned for up to 10 years. (INA section 243(a)(1)).
[ ] Other:

Date: Jun 21, 2007

ELIZA C. KLEIN, Judge

APPEAL: (✓) waived ( ) reserved by ( ) Respondent ( ) INS (✓) Both

DUE BY:

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: [ ] MAIL [✓] PERSONAL SERVICE
TO: [✓] DHS [ ] ALIEN [✓] Alien's ATT/REP [ ] ALIEN c/o Custodial Officer
DATE: 6.21.07 BY: [ ] COURT STAFF [✓] JUDGE

Y2
Y2