File: (b) (6) Date:

In re: (b) (6) MAY 09 2006

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Larry J. Hagan, Esquire

APPLICATION: Withholding of removal; protection under the Convention Against Torture

ORDER:

PER CURIAM. This case was previously before us on May 27, 2004, when, following a (b) (6) remand from the United States Court of Appeals for the (b) (6) Circuit, we remanded the case to the Immigration Judge for further proceedings consistent with the court's decision. The Immigration Judge, after learning that the respondent had departed the United States, found that he was without jurisdiction to rule further on the case, and denied reopening of the case. We in turn found, in a decision dated May 4, 2005, that the respondent's departure constituted a withdrawal of his appeal. *See* 8 C.F.R. §§ 1003.4; 1003.2(d).

The matter is now before us pursuant to the (b) (6) order of the United States Court of Appeals for the (b) (6) Circuit. The court granted the government's unopposed motion to remand and vacated our May 4, 2005, decision. The government took the position in court that the respondent's withholding of removal and Convention Against Torture claims should be considered pursuant to the court's January 7, 2004, decision, regardless of the fact that the respondent is outside the United States. In view of the court's order granting the government's motion to remand, we find that remand to the Immigration Court for further consideration consistent with the (b) (6) court decision is required. Accordingly, the record is remanded to the Immigration Court for further proceedings consistent with the court's decision of (b) (6), and its order dated (b) (6) (b) (6)[1]

Frederick D Hess

FOR THE BOARD

[1] We note that in its (b) (6) decision, the court recommended that on remand, this case be assigned to a different Immigration Judge.

File: (b) (6)

Date: SEP 15 2008

In re: (b) (6)

IN REMOVAL PROCEEDINGS

CERTIFICATION

ON BEHALF OF RESPONDENT: Pro se [1]

ORDER:

PER CURIAM. This case was last before us on May 9, 2006, when we remanded the record to the Immigration Judge for further proceedings consistent with the (b) (6) order of the United States Court of Appeals for the (b) (6) Circuit. In an order dated June 24, 2008, the Immigration Judge certified the case to the Board to address whether the respondent was to have an asylum hearing. In its (b) (6) order, the (b) (6) Circuit granted the motion to remand filed by the government. In that motion, the government sought remand for consideration of the alien's application for asylum, withholding of removal, and protection under the Convention Against Torture. The (b) (6) Circuit did not modify or amend that language when it granted the motion to remand. The government's motion seemingly conflicts with the (b) (6) Circuit's finding in its (b) (6) decision that the respondent was ineligible for asylum because he failed to file his application within 1 year of arrival. However, as the (b) (6) Circuit granted the motion without modification, in its (b) (6) order, the Board and the Immigration Judge are bound by the language in the motion which reflects that the case was being remanded for consideration "on the merits" of the respondent's claim for asylum, withholding of removal, and protection under the Convention Against Torture. Therefore, the respondent shall be allowed to apply for asylum as well as withholding of removal and protection under the Convention Against Torture.

Accordingly, the record is returned to the Immigration Judge for further proceedings consistent with the foregoing opinion as well our May 9, 2006, decision, and the (b) (6) Circuit's (b) (6) order.

FOR THE BOARD

[1] A courtesy copy of our decision will be sent to the respondent's attorney, Larry J. Hagen, Esquire, who represents the respondent before the Immigration Judge and who represented him at the time of the Board's May 9, 2006, decision.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
(b) (6)

File #: (b) (6)

In the Matter of:
(b) (6)
Respondent

IN REMOVAL PROCEEDINGS

Application: Certification Request

On Behalf of Respondent:
Larry Hagen, Esq.
(b) (6)

On Behalf of the Department:
K. Lundgren, Esq.
Dept. of Homeland Security
(b) (6)

CERTIFICATION

This request for certification is made *sua sponte* for purposes of requesting clarification of the Board's last order dated May 09, 2006, both parties having been duly notified. The question at issue is *whether respondent remains ineligible for asylum (failure to timely file)*. The parties do not dispute that respondent is eligible for 241(b) withholding along with CAT relief.

The Board's May 9, 2006 decision appears to limit respondent's relief to the latter. In its decision the Board notes that "[t]his case was last before us on May 27, 2004, when, following a (b) (6) remand from the United States Court of Appeals for the (b) (6) we remanded the case to the Immigration Judge for further proceedings consistent with the court's decision." Ex. B.

In (b) (6) the (b) (6) granted respondent's petition for review and issued a remand order as discussed by the Board. However, the Circuit Court appeared to take *no issue* with the immigration judge's finding that respondent had *failed to timely file for asylum within one year*. As support for this position the Board is directed to (b) (6) wherein the Court states "Because he hadn't requested asylum within a year of arriving in the United States (missing the deadline by 19 days), he was ineligible for asylum.... But he was eligible to request witholding of removal." (b) (6) (emphasis in the original).

Nonetheless, at his April 16, 2008 merits hearing respondent insisted that he *was asylum eligible* despite the Board's instructions and the (b) (6) order. In order to efficiently resolve all eligibility issues this judge hereby requests that the Board resolve this question with further instructions .

Pursuant to the regulations at 8 CFR §1007, the parties have the rights to make representations before the Board, including requesting oral argument and submitting briefs.

CARLOS CUEVAS
U.S. IMMIGRATION JUDGE

Date: June 24, 2008