File: (b) (6)

Date: SEP 27 2005

In re: (b) (6)

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENTS: Tom Youngjohn, Esquire

ON BEHALF OF DHS: James S. Yi
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] -
In the United States in violation of law (both respondents)

APPLICATION: Asylum; withholding of removal

ORDER:

PER CURIAM. This case was previously before us on November 18, 2002, when we summarily affirmed, without opinion, the results of the Immigration Judge's decision denying the respondents' applications for asylum and withholding of removal, and their requests for protection under the Convention Against Torture. The Immigration Judge found that the male respondent was ineligible for asylum because he had not filed his asylum application within a year of entering the United States. He further found that the respondents did not establish eligibility for withholding of removal, and the female respondent did not establish eligibility for asylum, because they did not show that any harm they suffered in Ukraine was on account of a protected ground. He also denied their requests for protection under the Convention Against Torture (CAT).

On March 10, 2003, we denied the male respondent's motion to reopen, which argued that his failure to file his asylum application within 1 year was due to the ineffective assistance of counsel. We found it unnecessary to address that claim because the respondent had not in any event shown persecution on account of a protected ground.

The matter is now before us pursuant to the (b) (6) decision of the United States Court of Appeals for the (b) (6) The court found that substantial evidence did not support the finding that the respondents had not shown that the persecution they suffered was inflicted at least in part on account of a protected ground. The court further found that the Immigration Judge erred in not addressing and ruling on the male respondent's assertion that his failure to apply for asylum within the 1-year deadline was due to extraordinary circumstances, the ineffective assistance of counsel. The court upheld the denial of the respondents' requests for CAT protection. The court remanded the case for a determination whether extraordinary circumstances excused the male respondent's failure to apply for asylum within 1 year of his arrival, and for a finding whether the respondents have "satisfied the remaining requirements for asylum and withholding of removal."

Pursuant to the court's decision, a remand is necessary so the Immigration Judge may make the findings required by the decision in the first instance. Accordingly, the decisions of the Board in this case dated November 18, 2002, and March 10, 2003, are vacated, the removal proceedings are reopened, and the record is remanded to the Immigration Judge for further proceedings consistent with the court's decision.

FOR THE BOARD

IMMIGRATION COURT

In the Matter of
(b) (6)
Respondent

Case No.: (b) (6)

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 3-2-07.
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[ ] The respondent was ordered removed from the United States to UKRAINE or in the alternative to .
[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to or in the alternative to .
[ ] Respondent's application for voluntary departure was granted until upon posting a bond in the amount of $ _____ with an alternate order of removal to .

Respondent's application for:
[ ] Asylum was ( )granted ( )denied ( )withdrawn.
[ ] Withholding of removal was ( )granted ( )denied ( )withdrawn. AS TO UKRAINE
[ ] A Waiver under Section _____ was ( )granted ( )denied ( )withdrawn.
[ ] Cancellation of removal under section 240A(a) was ( )granted ( )denied ( )withdrawn.

Respondent's application for:
[ ] Cancellation under section 240A(b)(1) was ( ) granted ( ) denied ( ) withdrawn. If granted, it is ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
[ ] Cancellation under section 240A(b) (2) was ( )granted ( )denied ( )withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
[ ] Adjustment of Status under Section ____ was ( )granted ( )denied ( )withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
[ ] Respondent's application of ( ) withholding of removal ( ) deferral of removal under Article III of the Convention Against Torture was ( ) granted ( ) denied ( ) withdrawn.
[ ] Respondent's status was rescinded under section 246.
[ ] Respondent is admitted to the United States as a _____ until _____.
[ ] As a condition of admission, respondent is to post a $ _____ bond.
[ ] Respondent knowingly filed a frivolous asylum application after proper notice.
[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.
[ ] Proceedings were terminated.
[ ] Other: SECURITY CHECKS CONTINUED
Date:

Kenneth Josephson
KENNETH JOSEPHSON
Immigration Judge

Appeal: Waived/Reserved Appeal Due By:
BY BOTH