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

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

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the Motion to Dismiss without Prejudice, the Court HEREBY ORDERS that the motion be:

[✓] **GRANTED.** Good cause has been established for this motion. These proceedings are hereby terminated without prejudice. This termination order does not constitute a final judgment rendered on the merits of these proceedings.

[ ] **DENIED.** _____

_____

_____

_____ Date: 2/12/13
Immigration Judge Bukszpan

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Date: _____ By: Court Staff _____

File: (b) (6)

Date: JUN 26 2009

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Paul S. Haar, Esquire

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

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of China, appeals from the Immigration Judge's December 19, 2006 decision ("I.J.2") denying his application for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158, withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3), and protection under the Convention Against Torture ("CAT"). This case was last before us on June 22, 2006, when we remanded the record to the Immigration Court for further proceedings consistent with the (b) (6) decision of the United States Court of Appeals for the (b) (6) in this case. *See* (b) (6) *v. Gonzales*, (b) (6) (b) (6). We will vacate the Immigration Judge's December 19, 2006 decision and remand the record to the Immigration Court.

On appeal, the respondent contends that the Immigration Judge failed to comply with the (b) (6) (b) (6) decision remanding this matter, arrived at erroneous legal conclusions based on clearly erroneous findings of fact, and exhibited bias against the respondent. The Department of Homeland Security ("DHS") has not filed a brief on appeal.

After our June 22, 2006 decision remanding the record to the Immigration Court in light of the (b) (6) remand of this case to the Board, the Immigration Judge provided the parties an opportunity to present additional witness testimony and documentary evidence. The respondent elected to rest on the record and DHS submitted only updated background materials (I.J.2 at 2). The Immigration Judge issued a written decision incorporating by reference the summary of testimony contained in his August 23, 2001 oral decision ("I.J.1") (I.J.2 at 2-3; I.J.1 at 2-3). However, without explanation, material facts described in the Immigration Judge's December 19, 2006 written decision are inconsistent with the facts as described in his August 23, 2001 oral decision (I.J.1 at 2-4; I.J.2 at 4-5). For example, the Immigration Judge found in his written decision that *the respondent* sought "a reduction from the assessed tax amount because the respondent failed to have sufficient money for his son's education," but the respondent's testimony described in the Immigration Judge's

oral decision indicated that the respondent had been "blackmailed or extorted" and when he challenged this practice, *the tax official* "(b) (6) (b) (6) I.J.1 at 2-3; Tr. at 20-21; I.J.2 at 4-5.) The Immigration Judge relied on this and other unexplained and inconsistent findings of fact on remand to conclude that the respondent's mistreatment "[c]learly . . . [was] not motivated by any political opinions or political activities." (I.J.2 at 5.) Moreover, the Immigration Judge failed to address fully the portions of the (b) (6) (b) (6) opinion concerned with resolving whether "what began as an attempt by the government to extort [the respondent] became an attempt to repress his challenge to the government's legitimacy," and whether the respondent "adduced sufficient evidence to show that his persecutors were motivated by his opposition to the government itself." *See* (b) (6) *supra*, at (b) (6) Thus, we agree with the respondent that the Immigration Judge committed legal error and clear factual error in his December 19, 2006 decision.

However, notwithstanding the respondent's contentions on appeal, we find insufficient record evidence to support a finding that the Immigration Judge exhibited personal bias against the respondent.[1] *See Liteky v. United States*, 510 U.S. 540, 554-556 (1994) (holding that "opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible."); *see also Matter of Exame*, 18 I&N Dec. 303, 306 (BIA 1982) (holding that an alien generally must show "personal, rather than judicial bias stemming from an 'extrajudicial source' which resulted in an opinion on the merits on some basis other than what the immigration judge learned from his participation in the case."). Nonetheless, given the passage of time and lengthy procedural history, we find it most efficient to remand to a different Immigration Judge for further proceedings, including a new hearing consistent with the (b) (6) remand.

Accordingly, the following orders will be entered.

ORDER: The Immigration Judge's December 19, 2006 decision is vacated.

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings before a different Immigration Judge and entry of a new decision.

FOR THE BOARD

[1] We also note in this regard that the respondent has not demonstrated that the additional evidence submitted on appeal meets the standard for reopening, 8 C.F.R. §§ 1003.2(c)(1), (c)(4), and we reject the respondent's implication that legal or factual errors combined with statistical asylum grant or denial rates are sufficient to demonstrate an Immigration Judge's bias in a particular case.

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

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6)

Date: JUN 22 2006

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jeffrey Bloom, Esquire

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

APPLICATION: Asylum; withholding of removal

ORDER:

PER CURIAM. This case was last before us on August 28, 2002, when we summarily affirmed, without opinion, the results of the Immigration Judge's decision denying the respondent's application for asylum and withholding of removal, and his request for protection under the Convention Against Torture. The matter is now before us pursuant to the (b) (6) decision of the United States Court of Appeals for the (b) (6) *v. Gonzales*, (b) (6) (b) (6) The Court held that the Immigration Judge did not adequately consider whether the respondent "adduced sufficient evidence to show that his persecutors were motivated by his opposition to the government itself" in finding that the respondent's claim was not on account of a political opinion. *Id.* at 548.

In view of the Court's decision that the Immigration Judge must undertake a factual inquiry into the context of the respondent's activities, and the nature of his opposition to the government's extortionate practices, we find that a remand is necessary. Accordingly, the record is remanded to the Immigration Judge for further proceedings consistent with this decision and the order of the court.

FOR THE BOARD