File: (b) (6) Date: MAR 22 2011

In re: (b) (6)

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: George P. Mann, Esquire

ON BEHALF OF DHS: Michael B. Dobson
Senior Attorney

APPLICATION: Remand

This case is before the Board pursuant to an (b) (6) order from the United States Court of Appeals for the (b) (6) in which the court vacated the Board's May 7, 2009 decision. Subsequently, the Department of Homeland Security (the "DHS") moved to remand the record to the Immigration Judge for further consideration. The respondent opposes the motion to remand, and argues that proceedings should be terminated.[1] The DHS has opposed the request for termination.

Given the fact-finding role of the Immigration Judge, the chronology of events including the vacation of the respondent's conviction *after* the Immigration Judge's decision had been entered, and the clarification by the (b) (6) regarding the burden of proof, we will remand the record to the Immigration Judge for further consideration of the respondent's removability after the parties have been provided the opportunity to present additional evidence. The effect of the Supreme Court's decision in Padilla v. Kentucky, 130 S.Ct 1473 (2010) can be addressed before the Immigration Judge.

ORDER: The record is remanded to the Immigration Judge for further proceedings not inconsistent with the (b) (6) order and for the entry of a new decision.

FOR THE BOARD

[1] The respondent's filing with the Board does not include a copy of the additional evidence that he proffered to the (b) (6)

IMMIGRATION COURT

(b) (6)

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 **AUGUST 2, 2011**. 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 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[ ] Asylum was ( )granted ( )denied( )withdrawn.

[ ] Withholding of removal was ( )granted ( )denied ( )withdrawn.

[ ] 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.

[XXX] **Proceedings were terminated.**

[XXX] Other: **UNOPPOSED BY DHS. RESPONDENT IS NO LONGER REMOVABLE AS CHARGED.**

Date: AUG 02, 2011

MARSHA K. NETTLES
Immigration Judge

Appeal: Waived/Reserved Appeal Due By: