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

In The Matter Of:	)	**Date: April 9, 2013**
(b) (6) [redacted]	)	IN REMOVAL PROCEEDINGS
Respondent.	)	
File No.: (b) (6) [redacted]	)	

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA" or "the Act"), as amended, in that the alien is present in the United States without being admitted or paroled, or has arrived in the United States at any time or place other than as designated by the Attorney General.

APPLICATIONS: Asylum Pursuant to INA § 208 and Withholding of Removal Pursuant to INA § 241(b)(3).

ON BEHALF OF RESPONDENT:

Patrick C. Hyde, Esq.
(b) (6) [redacted]

ON BEHALF OF SERVICE:

Nathan Herbert, Assistant Chief Counsel
U.S. Department of Homeland Security
(b) (6) [redacted]

WRITTEN DECISION

I. Facts and Procedural History

The respondent, (b) (6) [redacted] ("Respondent"), is a male, native and citizen of Sierra Leone who entered the United States on or about December 15, 2000, at or near (b) (6) [redacted] (Exh. 1, Notice to Appear ["NTA"], 01/08/02; Form I-589, Application for Asylum and for Withholding of Removal ["I-589"], 10/18/01; Tr. at 1, 03/17/05.) He was not then admitted or paroled after inspection by an Immigration Officer. (Exh. 1, NTA.)

Respondent affirmatively applied for asylum and withholding of removal with the former Immigration and Nationalization Service ("INS") on or about October 18, 2001, claiming a well-founded fear of persecution in Sierra Leone based on his political opinion. (I-589.) After Respondent had an interview with an asylum officer, the application was referred to the (b) (6) [redacted] Immigration Court ("Court"). Based on the foregoing allegations, INS, now called the

(b) (6)

Department of Homeland Security ("DHS"), issued an NTA to Respondent on January 8, 2002, charging him as removable pursuant to section 212(a)(6)(A)(i) of the Act, as an alien present without inspection. (Exh. 1, NTA.) The filing of this charging document commenced proceedings and vested jurisdiction with this Court. 8 CFR § 1003.14(a) (2013).

On May 23, 2002, Respondent appeared in Court and, through counsel, admitted the factual allegations and conceded the charge of removability. (Tr. at 1.) By way of relief, he renewed his request for asylum and withholding of removal based on his feared persecution in Sierra Leone on account of his political opinion. (I-589.) An individual hearing was conducted on April 19, 2004, but due to issues with the language used by the interpreter, the case was continued for a *de novo* hearing. (Tr. at 24-65.) On November 1, 2004, Respondent again testified to the merits of his claim as did his witness, (b) (6) "Mr. (b) (6) . (Tr. at 84-225.) The parties returned to Court on November 8, 2004 for closing arguments and an oral decision. (Tr. at 226 – 246.) At that time, the Court rendered an oral decision, granting Respondent asylum relief based on the past persecution he suffered on account of his political opinion. (Oral Decision of the Immigration Judge ["IJ"], 11/8/04.)

Thereafter, DHS appealed the Court's decision to the Board of Immigration Appeals ("Board" or "BIA"), challenging the Court's finding regarding Respondent's credibility and the Court's grant of asylum. The Board agreed with DHS, finding that the Court's credibility determination was clearly erroneous. (Order of the BIA, 12/21/05.) The Board found, based on its credibility determination, that Respondent had failed to establish eligibility for either asylum or withholding of removal and that current country conditions did not support a finding that Respondent would be tortured for purposes of relief under the CAT. (*Id.*) The Board therefore sustained DHS' appeal, vacated the Court's decision, and remanded to this Court for an order of removal. (*Id.*) On remand, the Court ordered Respondent removed and on May 2, 2007, the Board dismissed Respondent's appeal of the Court's order of removal. (Order of the BIA, 05/02/07.)

Respondent then appealed the Board's decision to the (b)(6) Court of Appeals. On appeal to the (b) (6) Respondent argued that the Board "did not appropriately review the IJ's credibility determination under the clearly erroneous standard." *See* (b) (6) *v. Mukasey*, (b) (6) In a published decision, the (b) (6) agreed with Respondent, finding that the Board "did not properly review the IJ's credibility finding under the clearly erroneous standard." *Id.* at (b) (6) The (b) (6) therefore vacated Respondent's order of removal and the Board's decision regarding asylum and withholding of removal, and remanded Respondent's applications for relief to the Board for further proceedings. *Id.* However, the (b) (6) denied Respondent's petition for review on his claim for relief under the CAT. *Id.*

On remand, the Board issued a decision on February 17, 2009, affirming the Court's November 8, 2004 determination regarding Respondent's credibility. (Order of the BIA, 02/17/09.) The Board further found that in taking Respondent's testimony as true, he had established past persecution and was entitled to a presumption of well-founded fear of persecution. (*Id.*) The Board remanded Respondent's case to this Court to allow DHS the opportunity to rebut Respondent's presumption of a well-founded fear of persecution pursuant to

section 1208.13(b)(1)(i)(A) of the Code of Federal Regulations ("Regulations"). (*Id.*) The Board further instructed the Court to allow the parties to provide further evidence regarding his eligibility for asylum and withholding of removal, including submission of updated country conditions. (*Id.*)

On December 10, 2012, Respondent appeared in Court with counsel. (Digital Audio Recording ["DAR"], 12/10/12.) The Court allowed the parties to submit updated country condition articles and updated psychological reports prior to and at that hearing. (*Id.*; Affidavit Supp. to Mental Health Report of 8 May, 2010 Regarding the Case of (b) (6) ["Supp. Affidavit"], 06/21/10; Mental Health Report May 8, 2010 ["May 8 Affidavit"], 05/10/10.) The parties declined to take any additional testimony. Rather, Respondent and DHS gave arguments regarding changed country conditions and Respondent's potential eligibility for "humanitarian asylum" under section 1208.13(b)(1)(iii) of the Regulations.

This Court now issues a decision satisfying the 2009 BIA remand, considering all of the testimony and documents provided by DHS and Respondent, regardless of whether or not such evidence is specifically named in the text of this decision. The Court reiterates that the only issues on remand are (1) whether there has been a fundamental change in country conditions such that Respondent no longer has a well-founded fear of persecution; and (2) whether Respondent nonetheless merits a grant of asylum in the Court's discretion based on compelling reasons arising out of the severity of the past persecution or a reasonable possibility that he may suffer other serious harm upon removal to Sierra Leone. (Order of the BIA, 02/17/09); 8 C.F.R. § 1208.13(b)(1)(iii).

II. Testimonial Evidence

A. Respondent's Testimony

On November 1, 2004, Respondent testified in support of his asylum claim. (Tr. at 84-225.) As the Board found that Respondent's testimony established that he had suffered past persecution, the Court will only give a summary as to his past persecution claims. At his hearing on November 1, 2004, Respondent asserted that he feared being killed by Revolutionary United Front ("RUF") rebels if he returned to Sierra Leone.

Respondent testified that his brother was associated with a political group that opposed the RUF rebels and supported the then-president of Sierra Leone, Tijan Kabbah ("Mr. Kabbah"). Respondent testified that this brother was killed by the rebels in October 2000 while he was preparing to give a speech to a gathering of people in their town. Respondent later clarified that he, his father, and brother all supported Mr. (b) (6) and that his brother would hold gatherings several times a month to gain support for Mr. (b) (6) election. Respondent explained that he drove his brother's car to pick up people for the gatherings and that he believes the RUF rebels were aware of this.

After his brother was killed, Respondent testified that his father and two older children left their town because they feared that the RUF rebels would kill them too. Two weeks after his brother's death, RUF rebels attacked several people in his hometown. During this attack,

Respondent stated sixteen people were killed, including one of his daughters. Respondent stated that when he found his daughter dead in the street, he picked up her body and carried her home so that he could bury her.

Respondent testified that near the end of October 2000, four RUF rebels came to his home. Respondent stated they each raped his wife while holding a gun to his head and forcing him to watch. The rebels also threatened to kill Respondent, but chose not to because his daughter was crying. However, they warned Respondent that they would kill him if they returned to his home and he still refused to support them. After they had each finished raping Respondent's wife, the rebels kidnapped his wife and daughter. Respondent testified in November 2004 that he did not know where the rebels took his wife and that he had not yet found or heard from her.

Respondent testified that he decided to leave Sierra Leone soon after this incident because he was afraid the rebels would return to kill him. He traveled first to Guinea where he stayed for a few weeks before traveling to Canada with the help of his brother's friend who worked in the diamond business. Respondent stated that this man obtained a visa and passport for him to travel to Canada. Respondent indicated that he remained in Quebec, Canada for a couple of weeks before traveling to (b) (6) [redacted] by bus. Respondent further indicated that he believes he entered the United States on December 15, 2000. Respondent testified that he later traveled to (b) (6) [redacted] because he was put in touch with Mr. (b) (6) [redacted], the brother of his friend (b) (6) [redacted] who is a U.S. citizen that lives in (b) (6) [redacted]

B. Testimony of Mr. (b) (6) [redacted]

Mr. (b) (6) [redacted] testified as to the merits of Respondent's case on November 1, 2004. (Tr. at 199-210.) Mr. (b) (6) [redacted] testified that he had never met Respondent prior to meeting him in the United States. However, he stated that his brother, (b) (6) [redacted] told him that Respondent is from Sierra Leone and asked him whether Respondent could come to (b) (6) [redacted] Mr. (b) (6) [redacted] indicated that Respondent came to live with him near the end of March or beginning of April, after he had stayed in (b) (6) [redacted] for a few months.

III. Statements of Law

A. Credibility Determination

The respondent's testimony is of the utmost importance in proving an asylum claim because of the difficulty an individual faces in procuring documentary evidence after having fled a country. *Wiransane v. Ashcroft*, 366 F.3d 889, 897 (10th Cir. 2004). Thus, an applicant's testimony, standing alone, may be sufficient to meet the burden of proof if it is demonstrably credible, persuasive, and probative of facts sufficient to demonstrate that he is a refugee. *Id.*; INA § 208(b)(1)(B)(ii) (2013). Accordingly, an IJ must give "specific, cogent" reasons for an adverse credibility finding. *Wiransane*, 366 F.3d at 897-98.

Generally, the Board will defer to an IJ's credibility analysis. *Matter of S-A-*, 22 I&N Dec. 1328, 1331 (BIA 2000). The Board articulated a tripartite test to determine if an IJ's

credibility finding should be sustained. *Id.* The Board stated that it defers to an IJ's adverse credibility finding based on inconsistencies and omissions regarding events *central to an alien's claim* where a review of the record reveals: (1) the discrepancies and omissions described by the IJ are actually present in the record; (2) such discrepancies and omissions provide specific and cogent reasons to conclude that the alien provided incredible testimony; and (3) the alien has failed to provide a convincing explanation for the discrepancies and omissions. *Id.* (citing *Matter of A-S-*, 21 I&N Dec. 1106, 1109 (BIA 1998)). The Board also noted the most pertinent discrepancies exist between the respondent's testimony and the I-589 or the testimony on direct-examination and the testimony on cross-examination. *Id.* at 1331-32.

The Court recognizes that asylum applications filed after May 11, 2005, are subject to the provisions of the REAL ID Act of 2005. *See Matter of S-B-*, 24 I&N Dec. 42, 43 (BIA 2006). While both REAL ID and pre-REAL ID provisions permit adverse credibility findings based on discrepancies of inconsistent statements and fraudulent documents, pre-REAL ID provisions further require that a discrepancy go to the "heart" of the asylum claim to support an adverse credibility finding. *Cf. Elzour v. Aschcroft*, 378 F.3d 1143 (10th Cir. 2004) (stating that the "IJ did not fault the petitioner's testimony for containing inconsistencies or lacking in detail . . .); INA § 208(b)(1)(B)(iii) (stating a trier of fact, considering the totality of the circumstances, "may base a credibility determination . . . without regard to whether an inconsistency, inaccuracy or falsehood goes to the heart of the applicant's asylum claim or any other relevant factor.").

B. Asylum Pursuant to INA § 208

i. Eligibility for Asylum

Asylum is a discretionary form of relief available to aliens physically present or arriving in the United States who apply for relief in accordance with section 208 of the Act or section 235(b) of the Act. INA § 208(a)(1); *see INS v. Cardoza-Fonseca*, 480 U.S. 421, 444 (1987). The Attorney General may grant asylum to an applicant who establishes that he is a "refugee" as defined in section 101(a)(42) of the Act. INA § 208(b)(1)(A). However, an applicant is barred from relief under section 208 if he: (1) "ordered, incited, assisted, or otherwise participated" in the persecution of another person; (2) has committed a particularly serious crime or aggravated felony; (3) has committed a serious, nonpolitical crime outside the United States prior to arrival; (4) is a danger to United States security; (5) is a terrorist as defined under sections 212(a)(3)(B)(i)(I)-(IV), (VI) or 237(a)(4)(B); or (6) has been firmly settled in another country prior to arriving in the United States. INA § 208(b)(2).

a. Burden of Proof

The burden of proof is on the applicant to establish that he is a "refugee" as defined in section 101(a)(42). INA § 208(b)(1)(B)(i); 8 C.F.R. § 1208.13(a) (2013). This means that the applicant must demonstrate that he is outside of his country of nationality and is unable or unwilling to return to or to avail himself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42). Where the persecutor has mixed motives, the Respondent must demonstrate that an actual or imputed protected ground was or

will be at least one central reason for the persecution. INA § 208(b)(1)(B)(i); *see also Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211-12 (BIA 2007) (citing *Matter of Fuentes*, 19 I&N Dec. 658, 662 (BIA 1988)). Asylum is a discretionary form of relief and it can be denied to an applicant who is otherwise eligible. *Cardoza-Fonseca*, 480 U.S. at 444; *see also Ismaiel v. Mukasey*, 516 F.3d 1198, 1204 (10th Cir. 2008).

The trier of fact may require the applicant to supply corroborating evidence, even if his testimony is found to be credible, and the applicant must provide such evidence unless he does not have it or cannot reasonably obtain the evidence. INA § 208(b)(1)(B)(ii); *Matter of J-Y-C-*, 24 I&N Dec. 260, 263 (BIA 2007). The absence of corroborating evidence may lead to a finding that the alien has failed to meet his burden of proof. *Matter of S-M-J-*, 21 I&N Dec. 722, 725-26 (BIA 1997). However, this burden of proof analysis should not be confused with a credibility analysis. *Id.* at 731 ("[e]ven if an alien is found to be credible, if there is no context in which to evaluate [his] claim, [he] has failed to meet [his] burden of proof because [he] has not provided sufficient evidence of the foundation of [his] claim"). Where the Court finds significant, meaningful gaps in the record, applications will ordinarily have to be denied for failure to meet the burden of proof. *Matter of Dass*, 20 I&N Dec. 120, 124 (BIA 1989).

b. Timeliness

In order to be eligible to apply for asylum an alien must demonstrate by clear and convincing evidence that he filed his asylum application within one year after the date of his last entry into the United States. INA § 208(a)(2)(B); 8 C.F.R. § 1208.4(a)(2)(i). An application may be considered, notwithstanding the fact that it was filed more than one year after the alien's last entry into the United States, if the alien demonstrates the existence of either changed circumstances which materially affect his eligibility for asylum or the extraordinary circumstances relating to the delay in filing the application. INA § 208(a)(2)(D); 8 C.F.R § 1208.4(a)(4)-(5).

ii. *Persecution: Past Persecution and Well-Founded Fear*

Although persecution is not defined in the INA, it has been defined by the Board and by the Tenth Circuit as a threat to the life or freedom of, or the infliction of suffering or harm upon, an individual in order to punish him for possessing a belief or characteristic the persecutor seeks to overcome. *Woldemeskel v. INS*, 257 F.3d 1185, 1188 (10th Cir. 2001); *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985) (overruled on other grounds). The Tenth Circuit Court of Appeals stated, "persecution requires the infliction of suffering or harm upon those who differ ... in a way regarded as offensive and must entail more than just restrictions or threats to life or liberty." *Hayrapetyan v. Mukasey*, 534 F.3d 1330, 1337 (10th Cir. 2008). In determining whether an applicant has shown persecution, the trier of fact should consider incidents in the aggregate. *Id. at* 1337-38; *see also Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 26 (BIA 1998). The persecution must be carried out either by the government or a group the government is unable or unwilling to control. *See Niang v. Gonzales*, 422 F.3d 1187, 1194-95 (10th Cir. 2005) (quoting *Vatulev v. Ashcroft*, 354 F.3d 1207, 1209 (10th Cir. 2003); *Hayrapetyan*, 534 F.3d at 1337.

Past persecution is persecution which was suffered in the past on account of one of the five protected grounds. 8 C.F.R. § 1208.13(b)(1). An applicant who has been found to have suffered past persecution is presumed to have a well-founded fear of future persecution on account of the same ground. *Id.* The presumption of future persecution can be rebutted if the government demonstrates there has been a fundamental change such that the applicant no longer has a well-founded fear of persecution, or the applicant could relocate to another part of the country to avoid future harm, and it would be reasonable to expect the applicant to do so. 8 C.F.R. §§ 1208.13(b)(1)(i)(A)-(B). Ultimately, where an applicant has demonstrated past persecution the government bears the burden of rebutting the presumption of a well-founded fear of future persecution by a preponderance of the evidence. 8 C.F.R. § 1208.13(b)(1)(ii).

In the absence of evidence of past persecution, an applicant is deemed to have a well-founded fear of future persecution if there is a "reasonable likelihood" the applicant would be persecuted upon returning to his country of nationality on account of one of the five protected grounds and is unable or unwilling to avail himself of the protections of that country based upon such fear. 8 C.F.R. § 1208.13(b)(2). The applicant need not show it is more likely than not that he will be persecuted upon being returned to his country of nationality. *Cardoza-Fonseca*, 480 U.S. at 449. Rather, it is enough for an applicant to show that persecution is a reasonable possibility. *Id.* at 440 ("There is simply no room in the United Nations' definition for concluding that because an applicant only has a 10% chance of being shot, tortured, or otherwise persecuted, that he or she has no 'well-founded fear' of the event happening.").

Establishing a well-founded fear requires both a subjective and objective showing. *Yan v. Gonzales*, 438 F.3d 1249, 1251 (10th Cir. 2006); *Sadeghi v. INS*, 40 F.3d 1139, 1142 (10th Cir. 1994); *see also Matter of Mogharrabi*, 19 I&N Dec. 439, 445 (BIA 1987) (reasonable person standard is used in well-founded fear determinations). The subjective element requires that the applicant's fear be genuinely held. *Yan*, 438 F.3d at 1251. The objective component requires that the applicant's fear be objectively reasonable. *Id.* The objective component is proven through "credible, direct, and specific" evidence that shows the reasonableness of the fear. *Id.* Specifically, the applicant must possess a belief or characteristic a persecutor seeks to overcome by means of punishment of some sort; he must demonstrate the persecutor is already aware, or could easily become aware, that the applicant possesses the belief or characteristic; he must show the persecutor has the capability to punish the applicant; and he must prove the persecutor has the inclination to punish the applicant. *Mogharrabi*, 19 I&N Dec. at 446.

iii. *"On Account of"*

An applicant must demonstrate that he was or will be persecuted "on account of" race, religion, nationality, membership in a particular social group, or political opinion to meet the definition of refugee pursuant to INA § 101(a)(42). One of these five protected grounds must be "at least one central reason" for the persecution. INA § 208(b)(1)(B)(i); *see also J-B-N- & S-M-*, 24 I&N Dec. at 211-12. In the case of persecution on the basis of political opinion, it is the victim's political opinion, not the opinion of the persecutor, which is relevant to the inquiry and nexus requirement. *INS v. Elias-Zacarias*, 502 U.S. 478, 482 (1992); *see also Acosta*, 19 I&N Dec. at 234-35. To successfully make a claim of persecution on account of a political opinion, the applicant must show that the persecutor was aware of the applicant's political views and

sought to punish him for possessing those views. *Acosta*, 19 I&N Dec. at 235. Essentially, the applicant must prove that he held a political belief which the persecutor sought to overcome.

C. Withholding of Removal Pursuant to INA § 241(b)(3)

An individual is entitled to withholding of removal if he would be persecuted on account of his race, religion, nationality, membership in a particular social group, or political opinion upon return to his home country. INA § 241(b)(3)(A); 8 C.F.R. § 1208.16(b). In order to qualify for withholding of removal, "an alien must establish a clear probability of persecution." *INS v. Stevic*, 467 U.S. 407, 413 (1984). This requires that an applicant demonstrate that it is "more likely than not" that he will be persecuted upon to return to his country of nationality. *Cardoza-Fonseca*, 480 U.S. at 423; *Witjaksono v. Holder*, 573 F.3d 968, 977 (10th Cir. 2009); 8 C.F.R. § 1208.16(b)(2). Unlike asylum, withholding of removal is a mandatory form of relief where the alien has met this burden. *See Cardoza-Fonseca*, 480 U.S. at 444.

IV. Discussion and Analysis

A. Removability of Respondent

Prior to his individual hearing, Respondent admitted the factual allegations and conceded the charge of removability. Based upon these admissions, the Court sustained the charge of removability asserted against him. 8 C.F.R. § 1240.10(c). Having found Respondent removable as charged, the Court must proceed to determine whether he is eligible for the relief requested. Respondent bears the burden of proving he satisfies all of the eligibility requirements for the relief he seeks and must demonstrate that he warrants a favorable exercise of the Court's discretion. INA § 240(c)(4)(A).

B. Credibility Determination

Respondent filed his application for relief on October 18, 2002. (I-589.) As a result, he is not subject to the credibility provisions of the REAL ID Act. *See S-B-*, 24 I&N Dec. at 43. In its initial oral decision, the Court found that Respondent was credible. (Oral Decision of the IJ.) Although the BIA reversed the Court's credibility finding, th(b) (6) [redacted] found that the Board had not used the proper standard of review and therefore sustained the Court's credibility finding from November 8, 2004. (b) (6) [redacted] As no new testimony was taken, the Court maintains that Respondent and Mr.(b) (6) [redacted] are credible as to all matters.

C. Eligibility for Asylum Relief

1. Presence and Timeliness

Respondent is eligible to file for asylum because he is physically present in the United States. INA § 208(a)(1). Respondent last entered the United States on December 15, 2000 and filed his initial asylum application less than a year later on October 18, 2001. (Exh. 1, NTA; I-589); 8 C.F.R. 1208.4(a)(2)(ii). As such, the Court finds that Respondent is statutorily eligible to file for asylum. INA § 208(a)(2)(B).

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2. Past Persecution on Account of a Protected Ground

Respondent credibly testified to three separate incidents of harm occurring in October 2000 to him and his family members as detailed above and in the (b) (6) [redacted] opinion. (*See* (b) (6) [redacted] The Board found that these incidents rose to the level of past persecution and were on account of Respondent's political opinion by a group, RUF, that the government was unwilling or unable to control. (Order of the BIA, 02/07/09; *see also* Order of the BIA, 07/30/10.) As such, the Court maintains that Respondent has established that he suffered past persecution on account of his political opinion by a group the government is unwilling or unable to control. INA § 208(b)(1).

3. Rebuttable Presumption of Well-Founded Fear of Persecution

Because the Court finds that Respondent has suffered past persecution, Respondent is entitled to a presumption of a well-founded fear of future persecution, which DHS may rebut through a preponderance of the evidence. 8 C.F.R. § 1208.13(b)(1). The Court finds that DHS has provided evidence of changed country conditions in Sierra Leone such that Respondent no longer has a well-founded fear of persecution.

In his most recent affidavit to the Court, Respondent stated that he fears returning to Sierra Leone because he believes that if the RUF rebels see him, they will kill him. (Resp't. Affidavit, 06/21/10.) In argument on December 10, 2012, Respondent, through counsel, further stated that he believes the RUF rebels will seek revenge against him for fear that he will testify against them for the rape of his wife. (DAR, 12/10/12.) While the Court does not doubt Respondent's subjective fears, the Court finds that there has been a fundamental change in country conditions in Sierra Leone such that Respondent's fear is no longer objectively reasonable. Specifically, the eleven year civil war in Sierra Leone ended in 2002, the government, led by Mr. (b) (6) [redacted] asserted control over Sierra Leone, the RUF has since been disbanded, disarmed and demobilized, and many of the RUF leaders have been brought to trial and sentenced.[1] (DAR, 12/10/12; Mot. to Admit Service Exhibit at pp. 22-36, 02/05/03); Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *Sierra Leone Country Reports on Human Rights Practices - 2007* (July 2012), *available at* http://www.state.gov/j/drl/rls/hrrpt/2007/100503.htm; *see also Sowe v. Mukasey*, 583 F.3d 1281 (9th Cir. 2008) (finding that substantial evidence supported the BIA's finding that country conditions in Sierra Leone had changed with the conclusion of the civil war); *Jalloh v. Gonzales*, 498 F.3d 148, 150 (2d Cir. 2007) (same). Moreover, Sierre Leone had peaceful, multiparty presidential and parliamentary elections in 2007. (*See* DHS Submission at Hearing, 12/10/12.)

As such, the Court finds that DHS has established through a preponderance of the evidence that there has been a fundamental change in circumstances in Sierra Leone, thereby

[1] Respondent and DHS submitted State Department reports for 2000, 2001, and 2011, but none for 2002-2010. However, the Court may take administrative notice of commonly known facts, including those stated in the State Department reports. *See Woldemeskel v. INS*, 257 F.3d 1185, 1188 (10th Cir. 2001) (citing with approval the practice of an IJ or the Board taking administrative notice of commonly known facts and distinguishing from extra-record fact finding); *Kapcia v. INS*, 944 F.2d 702, 705-06 (10th Cir. 1991); *S-M-J-*, 21 I&N Dec. at 724 (holding that a country's background information must be included in the record for asylum claims whenever possible).

(b) (6)

rebutting the presumption that Respondent has a well-founded fear of persecution on account of his political opinion. INA § 208(b)(1); 8 C.F.R. §§ 1208.13(b)(1)(i)(A), (ii). Respondent has provided no other evidence to establish that he has a well-founded fear of persecution. *Id.* Therefore, the Court finds that Respondent no longer has a well-founded fear of persecution.

4. Grant in the Absence of Well-Founded Fear of Persecution

Even if DHS rebuts the presumption of a well-founded fear of persecution, a respondent who has established past persecution may nevertheless be granted asylum if he can demonstrate compelling reasons for being unwilling or unable to return to the country arising out of the severity of the past persecution. 8 C.F.R. § 1208.13(b)(1)(iii)(A); *Matter of N-M-A-*, 22 I&N Dec. 312 (BIA 1998) (looking the degree of harm suffered, the length of time over which harm was inflicted, and the evidence of psychological trauma stemming from harm); *Matter of Chen*, 20 I&N Dec. 16 (BIA 1989) (laying framework for "compelling reasons...arising out of the severity of the past persecution"). In the alternative, the respondent may demonstrate that there is a reasonable possibility that he will suffer other serious harm upon removal to that country. 8 C.F.R. § 1208.13(b)(1)(iii)(B); *Matter of L-S-*, 25 I&N Dec. 705 (laying framework for "other serious harm"). In either case, the IJ may determine that a favorable exercise of discretion is warranted for humanitarian reasons even if there is little likelihood of future persecution. *See L-S-*, 25 I&N Dec. at 710; *Chen*, 20 I&N Dec. at 19.

In the instant matter, the Court finds that Respondent warrants a favorable exercise of discretion for humanitarian reasons due to his compelling reasons for being unwilling to return to Sierra Leone arising out of his past persecution. 8 C.F.R. § 1208.13(b)(1)(iii)(A). Although the length of time over which Respondent suffered physical harm was approximately only a month, the degree of physical harm he suffered was quite intense and severe. Specifically, in the course of one month, October 2000, RUF rebels killed his brother and his daughter in two separate events, four RUF rebels raped Respondent's wife while he was held at gunpoint and forced to watch, RUF rebels threatened to kill Respondent, and RUF rebels kidnapped his wife and daughter. Further, Respondent could not locate his wife and daughter and did not know what happened to them for over eight years. Finally, in 2008, Respondent learned that his wife and daughter had been held by RUF rebels and treated as sex slaves until his wife managed to escape with their daughter. (Resp't. Affidavit.) Although Respondent's wife and daughter made it safely to Senegal in 2008, his wife died two months later because of the harm she had suffered. (*Id.*) Unfortunately, Respondent was unable to talk directly to his wife before she died, but she gave Respondent a warning through (b) (6) that he must not return to Sierra Leone because the rebels would kill him. (*Id.*) As such, while the actual harm occurred over a period of one month, the Court finds that the degree of harm was severe given the number of family members killed and persecuted and the uncertainty as to what happened to his wife and daughter. *N-M-A-*, 22 I&N at 325-26.

Moreover, unlike the respondents in *Jalloh* and *N-M-A*, Respondent has presented evidence that he has suffered psychological trauma stemming from the harm that is not only severe, but likely ongoing and permanent. (*See* May 8 Affidavit; Supp. Affidavit.); *Jalloh*, 498 F.3d at 151 (affirming that to obtain humanitarian asylum, the applicant must establish both "the severe harm and the long-lasting effects of that harm."); *N-M-A-*, 22 I&N at 325-26.

(b) (6)

Specifically, (b) (6) ("Mr. (b) (6), a Licensed Professional Counselor who has treated Respondent, states in his affidavit that Respondent is in a state of permanent grief over the horrors his wife and daughter suffered. In addition, he states Respondent continues to suffer from vivid memories of his wife's rape as well as carrying his daughter through the streets after she was killed. (May 8 Affidavit at 2.) Based on his observations and treatment of Respondent, Mr. (b) (6) has diagnosed Respondent with (b) (6) stemming from witnessing the atrocious events of October 2000. (*Id.*; *see also* Supp. Affidavit.) Mr. (b) (6) asserts that Respondent's "[f]eelings of guilt and shame, precipitated largely by his helplessness in the face of the onslaught against his loved ones, are still debilitating." (May 8 Affidavit at 2.)

Further, Respondent's mental harm has been exacerbated by the uncertainty of these proceedings in that the Board vacated his initial grant of asylum in 2004 and Respondent has had to relive his past experiences multiple times through an appeals process that took over five years. (May 8 Affidavit.) Indeed, Mr. (b) (6) states that the fear and uncertainties surrounding the past 10 years that Respondent has been in removal proceedings "seriously exacerbates his symptoms of depression and (b) (6) by intensifying the sense of impending doom that he and many torture survivors experience, and in turn, precipitating the sense of a foreshortened future, and even suicidal ideation." (*Id.* at 4; *see also* Supp. Affidavit.) It is clear to the Court that Respondent's removal to Sierra Leone would be detrimental to his psychological well-being given the severity of the harm he witnessed, his wife's subsequent escape from the RUF rebels after being held for 8 years as a sex slave, the lack of familial support in Sierra Leone, and his current psychological state. *Chen*, 20 I&N Dec. at 19. Consequently, based on the foregoing evidence of the physical and psychological harm suffered, the Court finds that Respondent has established compelling reasons for being unwilling or unable to return to Sierra Leone arising from the severity of his past persecution. 8 C.F.R. § 1208.13(b)(1)(iii)(A). Therefore, the Court will exercise its discretion favorably and grant Respondent asylum relief for humanitarian reasons.

D. Other Requested Relief

The Court finds that Respondent is eligible for relief in the form of asylum under Section 208 of the Act. As a result, the Court declines to analyze Respondent's eligibility for withholding of removal under Section 241(b)(3) of the Act.

V. Conclusion

Although Respondent has established that he has suffered past persecution on account of his political opinion, DHS proved by a preponderance of the evidence that there have been fundamental and significant changes in Sierra Leone such that Respondent no longer has a well-founded fear of persecution. Nevertheless, the Court finds that Respondent warrants a favorable exercise of discretion and grants Respondent asylum relief despite him no longer having a well-founded fear because he has compelling reasons for not being willing or able to return to Sierra Leone arising out of his past persecution. Accordingly, Respondent's application for asylum shall be granted.

(b) (6)

ORDERS

IT IS HEREBY ORDERED that Respondent's Application for Asylum pursuant to Section 208 of the Act be GRANTED.

IT IS HEREBY FURTHER ORDERED that Appeal is Reserved on Behalf of Both Parties.

April 9, 2013

David J. Cordova
Immigration Judge

File: (b) (6) [redacted] Date: JUL 30 2010

In re: (b) (6) [redacted]

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Patrick C. Hyde, Esquire

ON BEHALF OF DHS: Kathy Giraitis
Assistant Chief Counsel

APPLICATION: Reconsideration

In a decision on February 17, 2009, the Board considered this case on remand from the United States Court of Appeals for the (b)(6) [redacted] In that decision, we affirmed the Immigration Judge's determination with respect to credibility, found that the respondent had established past persecution on account of a protected ground (which created a presumption that the respondent had a well-founded fear of future persecution), and remanded the record for consideration of whether that presumption could be rebutted under 8 C.F.R. § 1208.13(b)(1)(i)(A). In so doing, we indicated that the parties should be provided with the opportunity to present additional evidence, including testimony and updated evidence concerning conditions in Sierra Leone. On June 21, 2010, the current motion was filed, which is opposed by the Department of Homeland Security (DHS).

To the extent that the respondent, through counsel, is alleging error in our most recent decision, it is a motion for reconsideration. A motion to reconsider a decision of the Board must be filed within 30 days after the date of that decision. *See* 8 C.F.R. § 1003.2(b)(2). The current motion to reconsider is untimely and will be denied as such. We point out that, as noted above, our most recent decision did not result in a remand for the issuance of an order of removal. Instead, the most recent decision resulted in a remand for further proceedings before the Immigration Judge (and fact finding with respect to whether the well-founded fear presumption has been rebutted) and for the issuance of a new decision.

The respondent presented additional evidence to the Board subsequent to our February 17, 2009, decision and in conjunction with the current motion. Inasmuch as the Board reopened proceedings and remanded the record to the Immigration Court to provide the parties with the opportunity for the presentation of additional testimony and documentary evidence and for additional fact finding below, jurisdiction for consideration of the new evidence lies with the Immigration Court and not this Board.

ORDER: The motion for reconsideration is denied.

(b) (6)

FURTHER ORDER: The case is returned to the Immigration Court without further action on the additional evidence presented to effectuate the remand set forth in our February 17, 2009, decision.[1]

FOR THE BOARD

[1] The Immigration Court should consider the remand in the February 2009 decision, in which proceedings were reopened for consideration of additional testimony and documentary evidence to determine whether, pursuant to 8 C.F.R. § 1208.13(b)(1)(i)(A), the DHS can rebut the well-founded fear presumption created by the finding of past persecution and for the entry of a new decision.

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Hyde, Patrick C., Esq.
Attorney at Law
(b) (6)

Office of the District Counsel
(b) (6)

Name: (b) (6)

(b) (6)

Type of Proceeding: Removal
Date of Motion: 6/21/2010

Date of this notice: 6/22/2010
Motion filed by: Alien

NOTICE

The Board of Immigration Appeals has received your motion to reconsider. The Board previously remanded this matter to the Immigration Court and proceedings are now pending before the Immigration Judge. Your motion to reconsider appears to be untimely and is therefore being forwarded to the Immigration Court to be included in the record of proceedings and considered by the Immigration Judge.

FILING INSTRUCTIONS:

If you have any questions about how to file something at the Board, you should review the Board's Practice Manual and Questions and Answers at www.justice.gov/eoir.

File: (b) (6) [redacted] Date: FEB 17 2009

In re: (b) (6) [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Patrick C. Hyde, Esquire

ON BEHALF OF DHS: Leila Cronfel
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] - Present without being admitted or paroled

APPLICATION: Asylum; withholding of removal; Convention Against Torture

This case was last before the Board on May 2, 2007, when we dismissed the respondent's appeal, of the Immigration Judge's February 28, 2006, order of removal.[1] On (b) (6) [redacted] the United States Court of Appeals for the (b)(6) [redacted] vacated the Board's decision, finding that the Board had not properly reviewed the Immigration Judge's credibility finding under the clearly erroneous standard. As a result, the (b) (6) [redacted] remanded removal proceedings to allow the Board the opportunity to reassess the respondent's asylum and "restriction of removal" claim. The respondent's appeal will be sustained and the record remanded.

Upon remand by the (b) (6) [redacted] we will affirm the Immigration Judge's determination relating to the respondent's credibility. Taking the respondent's testimony as true, we find that he established past persecution.

If an alien has established past persecution, a presumption arises that the alien also has a well-founded fear of persecution on the basis of the original claim. 8 C.F.R. § 1208.13(b)(1). In such cases, the burden of proof then shifts to the Department of Homeland Security (the "DHS") to rebut the presumption of a well-founded fear of persecution. 8 C.F.R. § 1208.13(b)(1)(ii). The DHS may

[1] On November 8, 2004, the Immigration Judge granted the respondent's application for asylum. The DHS appealed and on December 21, 2005, the Board reversed the Immigration Judge's decision but, remanded proceedings for an order of removal. On March 24, 2006, the respondent filed a Notice of Appeal of the Immigration Judge's February 28, 2006, order of removal.

meet this burden by showing, by a preponderance of the evidence, that there has been a "fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution." 8 C.F.R. § 1208.13(b)(1)(i)(A). Accordingly, the case will be remanded in order to allow the DHS the opportunity to rebut the well-founded fear presumption.[2]

On remand, the parties should be allowed to provide further evidence, including additional testimony, regarding the respondent's eligibility for asylum and withholding of removal. In addition, the Immigration Judge should afford the parties with an opportunity to submit updated country conditions.

Accordingly, the following order will be entered.

ORDER: The respondent's appeal is sustained and the record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

FOR THE BOARD

[2] We note for the record that the (b) (6) [redacted] concluded that the respondent had waived his right to challenge the Board's finding of changed country conditions in relation to his Torture Convention claim as he failed to specifically raise any argument to challenge this aspect of the Board's opinion. The (b) (6) [redacted] noted that the "BIA's finding regarding country conditions explicitly applied only to (b) (6) [redacted] CAT claim." However, a review of the Board's decision clearly shows that the finding applied to the respondent's asylum and Torture Convention claims. In fact, the final sentence of the paragraph relating to the change in country conditions in the Board's December 21, 2005, decision reads "Therefore, we find that the respondent has not shown a pattern or practice of persecution or that there is any continuing interest in him. *See id.*; 8 C.F.R. § 1208.13(b)(2)(iii)." We observe that the regulation cited in the final sentence of the paragraph relates specifically to "establishing asylum eligibility."

File: (b) (6) [redacted] Date: MAY 02 2007

In re: (b) (6) [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Patrick C. Hyde, Esquire

ON BEHALF OF DHS: Leila Cronfel
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] - Present without being admitted or paroled

APPLICATION: Asylum; withholding of removal; Convention Against Torture

This case was last before the Board on December 21, 2005, when we reversed the Immigration Judge's November 8, 2004, decision granting asylum to the respondent and remanded the record to the Immigration Judge to allow him the opportunity to issue an order of removal. Presently, the respondent appeals the Immigration Judge's removal order and the Board's December 21, 2005, decision. The appeal is dismissed.

On appeal, the respondent avers that the Board erred in our December 21, 2005, decision by engaging in "fact finding." Also, he maintains that he was credible and had established past persecution and a well-founded fear of future persecution.

We affirm and reincorporate our prior decision and supplement it with the following. The Board reviews findings of fact by an Immigration Judge, including those as to the credibility of testimony, to determine whether the findings are "clearly erroneous." *See* 8 C.F.R. § 1003.1(d)(3)(i); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). The Board may review all questions of law, discretion, and judgement and all other issues on appeal from decisions of the Immigration Judge de novo. *See* 8 C.F.R. § 1003.1(d)(3)(iii). Based on our review of the record, we do not find that we erred or engaged in fact finding in our prior decision. The Immigration Judge's credibility finding was clearly erroneous as it was contrary to case law

CML

(b) (6)

concerning credibility findings. *See Matter of A-S-*, 21 I&N Dec. 1106 (BIA 1998); *Elzour v. Ashcroft*, 378 F.3d 1143 (10th Cir. 2004); *Matter of O-D-*, 21 I&N Dec. 1079 (BIA 1998).[1]

Accordingly, the respondent's appeal is dismissed and the following order will be entered.

ORDER: The respondent's appeal is dismissed.

FOR THE BOARD0

[1] The respondent asserts that he submitted a letter from the Ministry of Internal Affairs establishing his nationality. However, the letter fails to overcome the finding of the Forensic Document Laboratory. The letter is unauthenticated and the record does not disclose the manner in which the respondent obtained the letter.

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 .
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 Sierra Leone.
or in the alternative to
[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to Sierra Leone
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 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 appropriated 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 ( ) witholding 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: _____

Date: 2-28-06

DAVID J. CORDOVA
Immigration Judge

Appeal: Waived/Reserved Appeal Due By: 3-14-06

MTD

File: (b) (6) [redacted]

Date: DEC 21 2005

In re: (b) (6) [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Patrick C. Hyde, Esquire

ON BEHALF OF DHS: Leila Cronfel
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] - Present without being admitted or paroled

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The Department of Homeland Security (the "DHS," formerly the Immigration and Naturalization Service) appeals the Immigration Judge's decision, dated November 8, 2004, granting asylum to the respondent. The DHS' appeal will be sustained and the record remanded for an order of removal.

The Immigration Judge determined that the respondent was credible and had filed his asylum application within 1 year of his arrival in the United States (I.J. at 10-11). Furthermore, he concluded that the respondent had establish past persecution and a well-founded fear of future persecution in Sierra Leone.

On appeal, the DHS makes several arguments. First, the DHS alleges that respondent failed to establish his date of arrival in the United States or the timely filing of his asylum application. Second, the DHS claims that the respondent failed to establish his nationality, as his identification card and birth certificate were deemed "constructed documents" by the Forensic Document Laboratory (FDL). Third, the DHS asserts that the Immigration Judge erred in granting the respondent asylum as the respondent failed to establish past persecution or a well-founded fear of future persecution in Sierra Leone on account of one of the protected grounds. To further support its third argument, the DHS maintains that the respondent failed to establish that he was politically involved in Sierra Leone or that present country conditions are such that he possesses a fear of future persecution in his country. Last, in overall substance, although not by specific captioned heading in its brief, the DHS attacks the favorable credibility finding below.

ML

(b) (6) [redacted]

We find that the Immigration Judge's credibility determination is clearly erroneous. *See* 8 C.F.R. § 1003.1(d)(3); *Matter of A-S-*, 21 I&N Dec. 1106 (BIA 1998). The Immigration Judge acknowledged the FDL's finding relating to the fraudulent identification card and birth certificate submitted by the respondent (I.J. at 9-10). He recognized that such documents are "second-hand documents" that are obtained "from another . . . place other than regular government documents" (I.J. at 10). In fact, he conceded that the respondent's documents "look fairly new" and were "probably fairly new" (I.J. at 10). Nevertheless, in determining the respondent's credibility, he disregarded the FDL's finding and predicated his decision solely upon the similarities between the respondent's April 19, 2004, testimony and November 1, 2004, testimony (Tr. at 6, 10).[1]

In *Matter of O-D-*, 21 I&N Dec. 1079 (BIA 1998), the Board indicated that presentation by an asylum applicant of an identification document that is found to be counterfeit by forensic experts not only discredits the applicant's claim as to the critical elements of identity and nationality, but, in the absence of an explanation or rebuttal, also indicates an overall lack of credibility regarding the entire claim. In the present case, the respondent was unable to rebut or provide a persuasive explanation for the FDL's finding. When questioned about the documents, his response was very general and at times confusing. In fact, he testified that he was not certain as to the authenticity of his birth certificate as it was obtained by his father after "the first fight"(Tr. at 127-32). According to the respondent, his father knew that when the "fight started," the family was not going to remain in Sierra Leone (Tr. at 127-28). The record remains unclear as to when the "first fight" had occurred or the date and manner in which his father had obtained the documents. As for the identification card, the respondent testified that he could not remember when he obtained the card, but his father had accompanied him when he received it (Tr. at 177-80). Based on the respondent's testimony, we do not find that he adequately explained or rebutted the FDL's finding.

In addition to the fraudulent documents, the record contains inconsistencies and omissions that are central to the respondent's claim and provide specific and cogent reasons for an adverse credibility finding. *See Matter of S-A-*, 22 I&N Dec. 1328 (BIA 2000); *Matter of A-S-*, *supra*. In particular, the respondent's April 2004 testimony varied from his November 2004 testimony and he failed to provide material information at his April 2004 hearing. Also, his asylum application contradicts testimony that he provided at both hearings. For example, the respondent testified in November 2004, that he was mistreated in Sierra Leone because he was involved in "politics," was a member of a political group, and

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[1] The Immigration Judge had conducted a hearing on April 19, 2004. At that time, the respondent had testified extensively about his asylum claim (Tr. at 30-56). The Immigration Judge, however, decided to interrupt the hearing and reschedule for a new hearing as he felt that the respondent was "getting a little frustrated" with the interpreter's translation (Tr. at 56). The Immigration Judge determined that while the translator was fluent in the "Mandingo" language, the interpreter was not fluent in the respondent's specific "Mandingo" dialect (Tr. at 57-62). Notwithstanding the Immigration Judge's decision to conduct a "new hearing", he noted in his decision that the respondent's April 2004 testimony was "very consistent" with the November 2004 testimony (I.J. at 6).

(b) (6) [redacted]

"helped Tijan," the president of Sierra Leone (Tr. at 90, 92-93, 150). In contrast, while the respondent stressed his brother's political involvement and support of the Sierra Leonean president at the April 2004 hearing (Tr. at 39), he never indicated that he had been a personal supporter of the president or that he was personally involved in a political group. He also failed to mention his support of the president or his involvement in "politics" in his asylum application (Exh. 2). Rather, he expanded upon his brother's involvement in the country's government and a group called "Sumpu Ado Kathy" (Exh. 2). We note that while the respondent was able to name the specific group that his brother was involved with in his asylum application, he could not identify the group during the November 2004 hearing. In fact, he testified that he was involved with the same group (Tr. at 154-55). However, he admitted that he could not "pronounce" the name and did not know the name as he was "not educated" (Tr. at 151).

When questioned about the discrepancies, the respondent failed to provide a persuasive explanation. Instead, he attributed the discrepancies to his lack of formal education and mistakes made by his friend who had completed the asylum application (Tr. at 38, 47, 51, 53-54). We do not find the respondent's explanation to be convincing. Indeed, the respondent testified that the preparer of the asylum application spoke "Mandingo" (Tr. at 135). He further explained that while the preparer was not from his country, another person who spoke his specific dialect was present to intervene and translate if the preparer did not understand the respondent's response to the questions on the asylum application (Tr. at 135-36). Moreover, the respondent admitted that ultimately, he and the preparer "understood each other" (Tr. at 137).

In view of the foregoing, we cannot concur with the Immigration Judge's favorable credibility finding as the respondent submitted fraudulent documents and provided inconsistent testimony relating to matters central to his claim of persecution. *See Matter of O-D-, supra; Matter of S-A-, supra*; *Matter of A-S-, supra.* As such, we find that the Immigration Judge committed clear error in his credibility determination and consequently will reverse his favorable credibility finding.

Last, we observe that the United States Department of State's *Country Reports on Human Rights Practices* for 2001 (Country Report), shows a change in country conditions. Specifically, the Country Report reveals that a peace accord signed in July of 1999 "included the RUF in a power-sharing arrangement in the [Sierra Leonean] government" and that "[g]overnment-insurgent fighting" has continued on a "significantly reduced scale" since that time. The Country Report further states that the Sierra Leonean government and the RUF signed an agreement in November of 2000 that "included provisions for a cease-fire, disarmament, and deployment of peacekeepers in parts of the country under RUF control." *Id.* Another agreement was reached between the RUF and the government in May of 2000 and "[b]oth agreements have been respected." *Id.* Therefore, we find that the respondent has not shown a pattern or practice of persecution or that there is any continuing interest in him. *See id.*; 8 C.F.R. § 1208.13(b)(2)(iii).

Inasmuch as the respondent has failed to present credible testimony, we find that the respondent has failed to establish eligibility for either asylum or withholding of removal. The respondent has not alleged a fear of the Sierra Leonean government and current country conditions, as discussed above, do not suggest

(b) (6) [redacted]

that if the respondent is removed to Sierra Leone he will more likely than not be tortured, as required for relief under the Convention Against Torture. *See* 8 C.F.R. §§ 1208.16(c)(3), 1208.18(a). We will, therefore, sustain the DHS' appeal and vacate the Immigration Judge's decision. Accordingly, the following orders will be entered.

ORDER: The DHS' appeal is sustained.

FOR THE BOARD

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File: (b) (6) [redacted] Date: DEC 21 2005

In re: (b) (6) [redacted]

DISSENTING OPINION: Patricia A. Cole

Board Member Patricia A. Cole respectfully dissents. The majority' s finding the respondent incredible and reversing the Immigration Judge's grant of political asylum is contrary to 8 C.F.R. § 1003.1(d)(3). Not only does this record not support finding the Immigration Judge's credibility determination to be clearly erroneous the respondent's credibility is also not an issue argued by the DHS on appeal.

On appeal the DHS alleges that respondent failed to establish his nationality, that he applied for asylum within 1 year of his arrival, and that the respondent failed to establish past persecution or a well-founded fear of future persecution in Sierra Leone on account of one of the protected grounds. The DHS maintains that the respondent failed to establish that he was politically involved in Sierra Leone or that present country conditions are such that he possesses a fear of future persecution in his country.

However, the majority's reversal of the Immigration Judge is primarily based on the respondent's submission of fraudulent documents because the inconsistencies noted by the majority are not central nor material to the basis on which the Immigration Judge granted the respondent political asylum. The Immigration Judge did not find these nor other inconsistencies sufficient to render the respondent incredible and he based his decision on the respondent's overall testimony and the Country reports of record. This record does not support finding the Immigration Judge's credibility determination to be clearly erroneous.

The Immigration Judge found that the respondent's testimony was detailed and consistent enough, without the need for further corroborating evidence, to provide a coherent basis for his finding that the respondent established persecution and a well-founded fear of persecution on account of an imputed political opinion. The Immigration Judge made a factual finding that the respondent was persecuted in the past and that respondents future fear of persecution exists countrywide.

Accordingly, I would dismiss the DHS appeal.

Patricia A. Cole
Board Member