IMMIGRATION COURT

(b) (6)

In the Matter of

(b) (6)

Respondent

Case (b) (6)

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Jun 14, 2010. 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 .
[ ] 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[✓] Respondent's application for asylum was (✓)granted ( )denied ( )withdrawn.
[ ] Respondent's application for withholding of removal was ( )granted ( )denied ( )withdrawn.
[ ] Respondent's application for cancellation of removal under section 240A(a) was ( )granted ( )denied ( )withdrawn.
[ ] Respondent's application for cancellation of removal was ( )granted under section 240A(b)(1) ( )granted under section 240A(b)(2) ( )denied ( )withdrawn. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
[ ] Respondent's application for a waiver under section _____ of the INA was ( )granted ( )denied ( )withdrawn or ( )other.
[ ] Respondent's application for adjustment of status under section _____ of the INA was ( )granted ( )denied ( )withdrawn. If granted, it was ordered that respondent be issued all appropriate documents necessary to give effect to this order.
[ ] Respondent's status was rescinded under section 246.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: Jun 14, 2010

Appeal: NO APPEAL Appeal Due By:

Kenneth A. Bagley

KENNETH A. BAGLEY
Immigration Judge

File: (b) (6) [redacted]

Date: OCT 30 2003

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

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Douglas Nelson, Esquire

APPLICATION: Asylum; withholding of removal

DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR
NOV 06 2008
IMMIGRATION COURT
SAN DIEGO, CA

This case was last before us on July 23, 2004, when we dismissed the respondent's appeal of the Immigration Judge's April 28, 2003, decision denying his applications for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). In dismissing the respondent's appeal, we agreed with the Immigration Judge's alternative finding that even assuming arguendo that the respondent credibly established that he suffered past persecution during Saddam Hussein's regime, fundamental change in circumstances have occurred such that the respondent no longer has a well-founded fear of persecution by Saddam Hussein or members of the Ba'ath party. We also agreed with the Immigration Judge that the respondent has not established his eligibility for a humanitarian grant of asylum based on any past persecution he may have suffered. With regard to his fear of persecution on account of his Christian religion, we found that the respondent has not provided specific and detailed evidence to demonstrate a well-founded fear of persecution by the Muslim majority on this basis. Finally, we affirmed the Immigration Judge's decision denying the respondent's applications for withholding of removal and protection under the CAT.

On (b) (6) [redacted], the United States Court of Appeals for the (b) (6) [redacted] reversed the Board's decision regarding changed country conditions, finding that the holding that the fall of the Ba'ath party removed any fear of future persecution is not supported by substantial evidence. The (b) (6) [redacted] remanded the instant case for consideration of the respondent's eligibility for asylum and withholding of removal, specifically directing the Board to consider whether the respondent credibly established that he suffered past persecution, whether he has a well-founded fear of future persecution, and whether the respondent has shown that a reasonable possibility exists that he would suffer serious harm if returned to Iraq.[1] (b) (6) [redacted] Having further considered the respondent's appeal in light of (b) (6) [redacted] *supra*, we will remand the record for further proceedings.

GRS 9/3/04

[1] The respondent conceded that he is ineligible for protection under the CAT. The (b) (6) [redacted] agreed and rejected the respondent's claim for this relief from removal.

(b) (6)

We find it appropriate to remand the record so that the Immigration Judge's may reconsider his adverse credibility determination. In denying the respondent's asylum application, the Immigration Judge found the respondent's testimony to be confusing and conflicting, particularly his testimony regarding what happened to the letter from his father (which allegedly told of the harm visited upon the family on his account), and the chain of custody of the original identity documents, the copies of which he sought to submit with his asylum application. We note at the outset that while counsel on appeal has not provided persuasive explanations for the respondent's inconsistent testimony,[2] we cannot rely on these observations by the Immigration Judge to discredit the respondent's account of the incidents of harm he experienced in Iraq or claim of Chaldean Iraqi identity. It is not clear whether the Immigration Judge considered the testimony of the respondent's sister at the hearing that appears to corroborate, inter alia, the respondent's claim of harm to him and his family members, the existence of the father's letter, and the respondent's identity.

Likewise, the different spellings for the word "Chaldean" in the respondent's "singlehood certificate," or the inconsistency in his testimony regarding his asylum application in Greece, are not valid bases for questioning the credibility of the respondent's persecution claim under (b) (6) law. *See* (b) (6) (rejecting adverse credibility findings based on misspellings in document); *see generally*, (b) (6) Cir.1986) (ability to apply asylum elsewhere reveals nothing about fear of safety in homeland). Finally, while we disagree with counsel's argument that the respondent's failure to include in his declaration that he was physically harmed by the Iraqi authorities in 1994 was a mere omission of a "detail" that is to be "expected" (*cf.* Tr. at 127-29 *with* Gr. Exh. 5 at 5-18), we cannot uphold the Immigration Judge's decision based on this one omission in light of the other problematic aspects of the Immigration Judge's credibility determination, and our uncertainty regarding what weight, if any, was accorded to the respondent's sister's testimony. On remand, the Immigration Judge should reconsider the respondent's credibility, and enter a finding that takes into consideration the entirety of the record evidence, and that is consistent with prevailing case law.

After determining the respondent's credibility, the Immigration Judge should make specific findings regarding whether the respondent experienced past persecutory harm and what protected ground was implicated. The Immigration Judge should likewise make specific findings regarding whether the respondent established a well-founded fear of persecution on account of a protected ground arising from, or independent of, his past persecution claim. Such specificity is imperative because if the respondent establishes past persecution on account of a protected ground, he will be entitled to a presumption of a well-founded fear of future persecution on the basis of original claim. *See* 8 C.F.R. § 1208.13(b)(1); *Karapetyan v. Mukasey*, --- F.3d ----, 2008 WL 4210543 (9th Cir. 2008); *Matter of A-T-*, 24 I&N Dec. 617 (A.G. 2008) (discussing how the presumption is similarly applied in the context of withholding of removal). If, however, the respondent's fear of future persecution is "unrelated" to the past persecution, the respondent retains the burden of establishing

---

[2] For instance, counsel's explanation that the perceived inconsistency in the respondent's testimony with regard to the father's letter is the result of mistranslation is inconsistent with the respondent's admission at the hearing that his testimony was inconsistent because he was nervous (Tr. at 118-19). The respondent has not explained his inconsistent testimony regarding with whom he left his original documents during the course of his flight out of Iraq.

that his fear is well-founded. *Id*; *Matter of A-T-*, *supra* at n.2.

If the Immigration Judge finds that the respondent has established past persecution on account of a protected ground giving rise to a presumption of a well-founded fear of persecution on the same basis, he should reconsider whether the Department of Homeland Security has met its burden of rebutting this presumption, and provide an analysis that is consistent with the regulations, (b) (6) (b) (6) law and its decision in (b) (6) *v. Keisler, supra*. The Immigration Judge on remand should also reconsider, if necessary, whether the respondent is eligible for a discretionary grant of humanitarian asylum based on a "reasonable possibility that [the respondent] may suffer serious harm upon removal,"and make specific findings of fact in this regard. *Id*; *see also* 8 C.F.R. § 1208.13(b)(1)(iii). Finally, as noted by the Ninth Circuit, so much in Iraq has changed since the respondent's final hearing on April 28, 2003, and we find it appropriate to give the parties an opportunity on remand to supplement the record with additional evidence and relevant arguments.

Because the same or similar evidentiary and legal issues are also relevant to the respondent's application for withholding of removal, the Immigration Judge should likewise reconsider the respondent's eligibility for this relief from removal. In view of the foregoing, the following orders shall be entered.

ORDER: The Board's July 23, 2004, decision is vacated insofar as it affirmed the Immigration Judge's decision denying the respondent's application for asylum and withholding of removal.

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion.

FOR THE BOARD