U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT, (b) (6)

In the Matter of:

(b) (6)

(Respondent)

Case No.: (b) (6)
Docket: (b) (6)
Date: Sept. 26, 2007

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision 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.

[ ] 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 of a bond in the amount of $ _____ within 5 business days and with an alternate order of removal to _____. Respondent advised of limitations on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

[ ] Respondent's application for cancellation of removal under section 240A (a) was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's application for cancellation of removal under section 240A (b) was ( ) granted ( ) denied ( ) withdrawn ( ) reserved.

[ ] Respondent's application for a waiver under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's application for adjustment of status under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent is admitted to the United States as a _____ until _____.

[✓] Respondent's application for asylum was (✓) granted ( ) denied ( ) withdrawn. If asylum granted, see Bulletin Board for Benefits and Responsibilities. CPC

[✓] Respondent's application for section 241 withholding of removal was ( ) granted ( ) denied (✓) withdrawn.

[ ] Withholding of Removal/Deferral of Removal under UN Torture Convention was ( ) granted ( ) denied ( ) withdrawn.

[✓] Your application is granted; you must contact DHS for issuance of new documents.

[ ] Proceedings were terminated.

[ ] _____.

Dayna Beamer
DAYNA BEAMER
Immigration Judge

Appeal: Reserved / Waived (Alien /DHS/Both)
Appeal to BIA due:
_____Appeal packet provided JI Post Order Instructions provided

File: (b) (6)

Date:

In re: (b) (6)

APR 25 2007

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jisheng Li, Esquire

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

ORDER:

PER CURIAM. This case is presently before us pursuant to the (b) (6) decision of the United States Court of Appeals for the (b) (6) The court reversed the Board's finding that the respondent had not shown that the respondent's actions constituted "other resistance" to China's family planning practices. It remanded the case for a finding whether the respondent suffered past persecution on account of this resistance, or has a well-founded fear of future persecution in China. In view of the court's decision, which requires factual findings, the record will be remanded to the Immigration Judge. Accordingly, the decision of the Board in this case dated June 15, 2005, is vacated and the record is remanded to the Immigration Judge for further proceedings consistent with the court's decision.

FOR THE BOARD

EXHIBIT NO. 7

File: (b) (6)

Date: JUN 15 2005

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Charles Kinnunen, Esquire

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] - Arrived at a time or place not designated by the Attorney General

APPLICATION: Asylum; withholding of removal; Convention Against Torture

ORDER:

PER CURIAM. On (b) (6) the United States Court of Appeals for the (b) (6) granted the Government's unopposed motion to remand this matter to the Board. In the motion to remand, the Government requests that the Board be given an opportunity to reconsider its prior decision in this matter, in light of (b) (6) precedent regarding when and under what circumstances an alien may be required to produce corroborating evidence. The (b) (6) has held that "when an alien credibly testifies to certain facts, those facts are deemed true, and the question remaining to be answered becomes whether these facts, and their reasonable inferences, satisfy the elements of the claim for relief. No further corroboration is required." *See Ladha v. INS*, 215 F.3d 889, 900 (9th Cir. 2000). However, the Government notes that the Board required the alien to submit corroborating evidence, despite having overturned the Immigration Judge's adverse credibility determination.

While we recognize that requiring the respondent to submit corroborating evidence after finding his testimony credible was not in compliance with (b) (6) precedent, we find no error in our conclusion that the respondent failed to meet his burden of proof to establish eligibility for asylum or withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act or protection under the Convention Against Torture. Based upon our review of the record, we find that the respondent has not established that he falls within the definition of refugee on the basis of his having fought with birth control officials, who were removing furniture and other belongings from his family's house (Tr. at 17-19). The respondent has not demonstrated that these actions constitute "other resistance" to the government's family planning policies, such that he would be subject to persecution upon his return to China. *See* 8 U.S.C. § 1101(a)(42). The respondent has not shown that the officials' threat to arrest him after he was

(b) (6)

involved in an altercation with one of the officials was on account of an anti-government opinion being imputed to him, rather than as a result of his having confronted the birth control officials, who were attempting to do their job. The applicant has not established that an arrest would have been for a purpose other than an investigation into the incident and the possible levying of a criminal charge for interfering with the birth control officials' performance of their duties. He therefore has not met his burden of establishing that he has a well-founded fear of persecution on account of his actions regarding the birth control officials' removal of furniture from his family's house. We find that the evidence of record, considered cumulatively, does not show that the respondent has met his burden of demonstrating that he has suffered past persecution or has a well-founded fear of persecution on account of one of the five grounds for which asylum may be granted. *See Matter of S-A-*, 22 I&N Dec. 1328 (BIA 2000). Inasmuch as the respondent has failed to meet the burden of proof for asylum, it follows that he has also failed to satisfy the higher standard required for withholding of removal. *See INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987). Similarly, we find that the respondent has failed to establish that he would be tortured, by or at the acquiescence of the Chinese government, as required for protection under the Convention Against Torture. Accordingly, we do not disturb the outcome of our prior decision.

FOR THE BOARD