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

In the Matter of:

(b) (6)

In Removal Proceedings

NON-DETAINED

File No: (b) (6)

Next Hearing: April 16, 2013
Immigration Judge: Ronald L. Mullins

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the Joint Motion to Administratively Close Proceedings, the Court states the following:

1. The parties have agreed to administrative closure of the instant proceedings.

2. Other: _____.

THEREFORE, it is HEREBY ORDERED that the motion be:

[X] **GRANTED.** These proceedings are hereby administratively closed upon the joint consent and motion of the parties. Proceedings may be recalendared at any time upon either party's motion, and this order does not constitute a final judgment rendered on the merits of these proceedings.

[ ] **DENIED.** _____

Ronald L. Mullins

Immigration Judge **Ronald L. Mullins**

Date: APR 10 2013

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Date: April 10, 2013 By: Court Staff S. Oehoa

File: (b) (6) Date: MAY 31 2012

In re: (b) (6)

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Alan Hutchison, Esquire

ON BEHALF OF DHS: Christian Parke
Assistant Chief Counsel

APPLICATION: Reconsideration

The respondent has filed a motion to reconsider this Board's decision dated November 14, 2011. The respondent's motion will be denied.

A motion to reconsider must state the errors of fact or law in the prior decision, and be supported by pertinent authority. 8 C.F.R. § 1003.2(b); *Matter of O-S-G-*, 24 I&N Dec. 56 (BIA 2006). It is a request that the prior decision be reexamined in light of additional legal arguments, a change of law, or an argument or aspect of the case which was overlooked. *See Matter of Cerna*, 20 I&N Dec. 399, 402 (BIA 1991) ("The very nature of a motion to reconsider is that the original decision was defective in some regard."). A motion to reconsider is not simply an opportunity to file a new brief raising or expanding upon previously asserted arguments.

We find no new legal argument nor any particular aspect of case that was overlooked in our previous decision. The respondent has merely reasserted arguments that were addressed and rejected by our decision dated November 14, 2011, and she has failed to raise any arguments or aspect of the case that would cause us to depart from such decision.[1]

For the reasons discussed in our prior decision, we reject the respondent's request to address the particular social group issue at this juncture. Although the remand from the (b) (6) stated that the Board should make certain determinations on remand, it is clear that the court also contemplated a further hearing before an Immigration Judge. (b) (6)
(b) (6)

Rather than decide the legal and factual issues raised by the court's decision piecemeal – including the respondent's particular social group argument, which was never presented before the

[1] Contrary to the respondent's assertion, our previous decision was issued by a three board member panel and not a single member (Respondent's Motion at 6).

(b) (6)

Immigration Judge – it is appropriate to remand to the immigration court for initial resolution of all issues raised by the court. 8 C.F.R. § 1003.1(d)(3)(iv). As stated by the (b) (6)

> Our judicial system generally assumes that consideration of an issue at both the trial court and appellate court level is more likely to yield the correct result, because the issue will be more fully aired and analyzed by the parties, because more judges will consider it, and because trial judges often bring a perspective to an issue different from that of appellate judges.

Ecological Rights Found. v. Pacific Lumber Co., 230 F.3d 1141, 1154 (9th Cir. 2000).

As the respondent has not shown that our previous decision was defective in any way, her motion for reconsideration will be denied.

Accordingly, the following order will be entered.

ORDER: The respondent's motion is denied.

FOR THE BOARD

File: (b) (6)

Date: NOV 14 2011

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Alan Hutchison, Esquire

AS *AMICUS CURIAE*: Claudia Valenzuela, Esquire
National Immigrant Justice Center

Karen Musalo, Esquire
Center for Gender & Refugee Studies,
U.C. Hastings College of the Law

ON BEHALF OF DHS: Christian Parke
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

This case is before us pursuant to the (b) (6) decision of the United States Court of Appeals for the (b) (6) (b) (6) The record will be remanded.

In its decision, the (b) (6) granted the respondent's petition for review and concluded that this Board erred in rejecting the respondent's proposed particular social group of "all women in Guatemala" as over-broad and "a mere demographic division of the population rather than a particular social group." (b) (6) *supra*, at (b) (6) Th(b) (6) found our decision dated March 6, 2006, was inconsistent with Board precedents and the (b) (6) case law. *Id.* The (b) (6) acknowledged that "particular social group" is an amorphous term, and remanded the case to the Board "to determine in the first instance whether women in Guatemala constitute a particular social group, and, if so, whether [the respondent] has demonstrated a fear of persecution 'on account of' her membership in such a group." *Id.* at 669.

We acknowledge and appreciate the briefs submitted by the parties and by *amici curiae*. In its response to the briefs filed by *amici curiae*, the Department of Homeland Security (the "DHS") requested a remand based on the fact that the respondent first asserted her expanded particular social group – all women in Guatemala – on appeal. As such issue was not presented to the Immigration Judge, the DHS argues that further development of the record is required on the viability of the group and, assuming the respondent's particular social group is viable, further fact-finding is necessary to determine whether she has demonstrated a fear of persecution "on account of" her membership in such a group. DHS Response to *Amici Curiae* Briefs, at 1-4. Further, the DHS states that a remand

is appropriate because the department is engaged in rulemaking to clarify various "core asylum eligibility requirements" including issues related to claims "premised on gender based persecution." *Id.* at 4-5.

Amicus curiae (National Immigrant Justice Center) urges us to decide the particular social group issue prior to a remand, if deemed necessary. The respondent opposes the DHS's request for a remand, and argues that the (b) (6) remanded the case to this Board to decide the particular social group issue "in the first instance" and that a remand would not comply with the (b) (6) (b) (6) mandate. Respondent's Reply Brief to DHS Response to Briefs of *Amici Curiae,* at 2-3.

We find the DHS's request for a remand persuasive. The (b) (6) decision does not prohibit a remand, and under the circumstances, further development of the record and fact-finding are warranted. 8 C.F.R. § 1003.1(d)(3)(iv) ("if further factfinding is needed in a particular case, the Board may remand the proceeding"); *Matter of Fedorenko*, 19 I&N Dec. 57, 74 (BIA 1984) ("The Board is an appellate body whose function is to review, not to create, a record."). Further, the respondent first raised the expanded particular social group issue on appeal before us, and a remand will enable the Immigration Judge to consider such issue in the first instance and to engage in any fact-finding that may be needed to resolve the issues in this matter, consistent with standard Immigration Court practice and procedure. *See Matter of Jimenez-Santillano*, 21 I&N Dec. 567, 570 n. 2 (BIA 1996) (recognizing that we generally do not consider an issue raised for the first time on appeal); *see also United States v. Greger*, 716 F.2d 1275, 1277 (9th Cir.1983) ("As a general rule, we will not consider an issue raised for the first time on appeal."), *cert. denied*, 465 U.S. 1007 (1984).

In light of the above, we will remand this matter to the Immigration Judge for consideration of the particular social group issue, and whether the respondent has demonstrated a fear of persecution "on account of" her membership in such a group, as well as any other relevant issues regarding the respondent's application for relief. (b) (6) *supra*, at (b) (6) 8 C.F.R. § 1003.1(d)(3)(iv) (discussing the Board's limited fact-finding authority). Upon remand, both parties will have an opportunity to present evidence in support of their respective positions for consideration by the Immigration Judge.

Accordingly, the following order will be entered.

ORDER: 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