IMMIGRATION COURT

In the Matter of

(b) (6)

Respondent

Case No.: A (b) (6)

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 1/13/06. 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 of 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 _____ alternative to _____.
[ ] Respondent's application for voluntary departure was granted until _____/_____/_____ upon posting a bond in the amount of $ _____ with the 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[ ] Asylum was ( ) granted ( ) denied ( ) withdrawn.
[ ] Withholding of removal was ( ) granted ( ) denied ( ) withdrawn.
[ ] A Waiver under Section _____ was ( ) granted ( ) denied ( ) withdrawn.
[ ] Cancellation of removal under section 240A(a) was ( ) granted ( ) denied ( ) withdrawn.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[ ] Cancellation of removal under section 240A(b)(1) was ( ) granted ( ) denied ( ) withdrawn. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
[ ] Cancellation of removal under section 240(b)(2) was ( ) granted ( ) denied ( ) withdrawn.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[ ] Respondent's application for adjustment of status under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn.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 application for ( ) withholding of removal ( ) deferral of removal under Article III of the Convention Against Torture was ( ) granted ( ) denied ( ) withdrawn or ( ) other.
[ ] Respondent's status was rescinded under section 246.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.
[X] Other: SECURITY CHECKS COMPLETE

Date: 01/13/06

Immigration Judge

Appeal: WAIVED BY BOTH

Appeal Due By:

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [/] ALIEN's ATT/REP [ ] INS

DATE: 01-13-06 BY: COURT STAFF

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

Q6

File: (b) (6)

Date: MAY 18 2005

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Michele Carney, Esquire

APPLICATION: Asylum; withholding of removal; protection under the Convention Against Torture

ORDER:

PER CURIAM. This case was last before us on October 1, 2002, when we summarily affirmed, without opinion, the results of the Immigration Judge's decision denying the respondent's application for asylum and withholding of removal. The Immigration Judge found the respondent credible, but concluded that he had not been harmed on account of a protected ground and that the harm he suffered did not rise to the level of past persecution.

The matter is now before us pursuant to the (b) (6) decision of the United States Court of Appeals for the (b) (6) The court found that the respondent was harmed on account of a protected ground, his ethnicity, and that the harm rose to the level of persecution. The court remanded for a finding whether there has been a fundamental change of circumstances such that the respondent no longer has a well-founded fear of persecution if returned to Bulgaria. The case was also remanded for reconsideration of the application for withholding of removal, and for a ruling on the respondent's request for protection under the Convention Against Torture.

In view of the court's decision, we find that a remand is necessary. On remand, both parties will have the opportunity to present and develop evidence regarding current country conditions in Blugaria, and how those conditions might affect this respondent's application for asylum. *See Lopez v. Ashcroft*, 366 F.3d 799 (9th Cir. 2004). We note that the last hearing in this case was held over 5 years ago. We also note that as past persecution has been shown, the burden of proof now shifts to the Department of Homeland Security to rebut the presumption of future persecution. 8 C.F.R. § 1208.13(b)(1)(ii).

(b) (6)

Accordingly, the decision of the Board in this case dated October 1, 2002, is vacated, and the record is remanded to the Immigration Judge for further proceedings consistent with this decision and the decision of the court.

FOR THE BOARD