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 Jan 6, 2006. 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 or in the alternative 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:

[X] Asylum was (X) granted ( ) denied ( ) withdrawn

[X] Withholding of removal was (X) granted ( ) denied ( ) withdrawn as to China.

[ ] A Waiver under Section _____ was ( ) granted ( ) denied ( ) withdrawn

[ ] Cancellation under Section 240A(a) was ( )granted ( )denied ( )withdrawn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[ ] Cancellation under Section 240A(b)(1) was ( ) granted ( ) denied ( ) withdrawn.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[ ] Cancellation under Section 240A(b)(2) was ( ) granted ( ) denied ( ) withdrawn, If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Adjustment of Status under Section _____ was ( ) granted ( ) denied ( ) withdrawn.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of removal ( ) deferral of removal under Article III of the Convention Against Torture was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's status was rescinded under section 246.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: Jan 6, 2006

Annie S. Garcy

ANNIE S. GARCY
Immigration Judge

Appeal: Waived/~~Reserved~~ Appeal Due By:

by both parties

Copy of post-order instructions attached

PL2

DHS Atty served with copy in court
Mr Wong served by mail

File: (b) (6) Date: OCT 14 2005

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Norman Kwai Wing Wong, Esquire

ON BEHALF OF DHS: Charles Parker, Jr.
District Counsel

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] -
In the United States in violation of law

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

ORDER:

PER CURIAM. This case was previously before us on October 6, 2003, when we summarily affirmed, without opinion, the results of the Immigration Judge's decision denying the respondent's application for asylum, withholding of removal, and protection under the Convention Against Torture. The Immigration Judge had found that the respondent did not testify credibly regarding her claim that she suffered persecution in China on account of her opposition to that country's family planning policies.

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 Immigration Judge's adverse credibility finding was not supported by substantial evidence, and it remanded the case to the Board for further proceedings. The court noted that it was not making a finding that the respondent was in fact credible, nor was it making a finding on the respondent's eligibility for relief. Notwithstanding this comment, the court rejected virtually every aspect of the Immigration Judge's credibility finding, and also stated that, given the Immigration Judge's statements regarding the respondent's demeanor, there are "no further bases on which to deny (b) (6) claim."

In view of the court's specific findings regarding the Immigration Judge's credibility determination, and upon further review of the record, we find no adequate basis to conclude that the respondent's testimony lacked credibility, and further find that she has established eligibility for asylum and withholding of

removal. The respondent testified that she provided information to a reporter regarding the evidence of infanticide she had seen while practicing at the hospital where she worked as a physician. She stated that shortly after this, she was taken from her home, and was detained for 91 days. During that time, she was regularly interrogated, and was beaten and otherwise physically abused on several occasions. She was never charged with any crime. When she returned to the hospital after her release, she found she had been fired.

Under these circumstances, we conclude that the respondent suffered past persecution in China on account of a protected ground, her resistance to that country's family planning policies. *See* section 101(a)(42) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(42). There is nothing in the record or in the 2004 *Country Report* to suggest that there has been such a fundamental change of circumstances or policies in China that the respondent's life or freedom would not be threatened if returned there. *See* 8 C.F.R. § 1208.13(b)(1)(i)(A).

Accordingly, the respondent is found eligible for asylum, dependent upon the required security checks, and the record does not reflect that a denial of asylum in the exercise of discretion is warranted in her case *See generally Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996). Further, in view of the court's decision, the respondent is also eligible for withholding of removal from China. Given today's decision, any request for protection under the Convention Against Torture is moot. *See generally Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987).

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h). *See* Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals, 70 Fed. Reg. 4743, 4752-54 (Jan. 31, 2005).

FOR THE BOARD