Files: (b) (6) (b) (6)

Date: APR - 6 2005

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Evelyn G. Zneimer, Esquire

ON BEHALF OF DHS: D. Allen Kenny
Assistant District Counsel

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 Immigration Judge's determination that the respondents' experiences in Guatemala did not amount to past persecution on account of a protected ground. The court remanded for a credibility finding, and then, if the respondents are found credible, for consideration whether the presumption of future persecution can be rebutted.

Although the Immigration Judge did not make an explicit credibility finding, his decision reflects that he considered the lead respondent's testimony to be credible in its essentials. Nor did he appear to doubt the credibility of her children, the other respondents in this case. Our review of the transcript and other evidence of record, including the testimony of the expert witness, convinces us that the lead respondent testified credibly regarding what happened to her and her family in Guatemala. Based on the court's decision, and our positive credibility finding, we will remand the record to the Immigration Judge.

On remand, the parties may present and develop any evidence they may have on the issue of internal relocation, as suggested by the court. The parties will also have the opportunity to further address the issue of current country conditions in Guatemala. We note that as the court has found that the respondent suffered past persecution, the burden will be on the Department of Homeland Security (DHS) to show that internal relocation would be reasonable, and that country conditions have so changed that the respondent would no longer have a well-founded fear of persecution if removed to Guatemala. *See* 8 C.F.R. § 1208.13(b)(3)(ii).

Accordingly, the decision of the Board in this case dated November 27, 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

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

In the Matter of:
(b) (6)
Respondent

A (b) (6)
IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of oral decision entered on December 21, 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 _____.
[ ] 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 an alternative order of removal to _____
[X] Respondent's application for asylum was (X) granted ( ) denied ( ) withdrawn.
[X] Respondent's application for withholding of removal was ( ) granted (X) denied ( ) withdrawn.
[ ] Respondent's application for withholding/deferral of removal under Article 3 of the Torture Convention 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 under Section 240A(b) was ( ) granted ( ) denied ( ) withdrawn.
[ ] Respondent's application for a waiver under Section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn ( ) other.
[ ] Respondent's application for adjustment of status under Section _____ of the INA as ( ) 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, without prejudice.
[ ] Proceedings were administratively closed.
[ ] Other: _____.

Date: 12-21-06
Administrative Control Court: Immigration Court (b) (6)
Hearing conducted by: Telephone Conference/Video Conference
Appeal: WAIVED/RESERVED(A/I/B)
APPEAL DUE BY: _____

James R. Fujimoto
Immigration Judge

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

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EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
HEARING LOCATION: (b) (6)

In the Matter of:

(b) (6)

Respondent

(b) (6)

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