U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6)

Date:

In re: (b) (6)

JUL 28 2005

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Gang Zhou, Esquire

ON BEHALF OF DHS: Mark Evans
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal

ORDER:

PER CURIAM. In a decision dated (b) (6) the United States Court of Appeals for the (b) (6) found that the respondent suffered past persecution in China on account of his practice of Falun Gong, and further held that the presumption of future persecution had not been rebutted. The court remanded the case for the Board to exercise its discretion on the asylum application. Pursuant to the court's decision, the Board's decisions in this case dated December 1, 2003, and July 25, 2003, are vacated. The respondent is 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. *See generally Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996). Given today's decision, the respondent is also eligible for withholding of removal from China.

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

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 .

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:

[ ] Asylum was ( ) granted ( ) denied ( ) withdrawn

[ ] Withholding of removal was ( )granted ( ) denied ( ) withdrawn

[ ] 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: 3/29/06

CLAREASE RANKIN YATES
Immigration Judge

Appeal: Waived/Reserved Appeal Due By:

BEN