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) MAR - 2 2005

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Gina Darvas, Esquire

ON BEHALF OF DHS: Thomas P. Haine
Assistant District Counsel

APPLICATION: Asylum; withholding of deportation

ORDER:

PER CURIAM. In a decision dated (b) (6) as amended on (b) (6) the United States Court of Appeals for the (b) (6) found that the respondent suffered past persecution in Germany, and further found that the presumption of future persecution had not been rebutted. The court therefore found the respondent eligible for asylum and it remanded the case for the Board to exercise its discretion on the asylum application and for further consideration of the withholding of deportation claim.

If one starts with the premise that the respondent has a well-founded fear of persecution, as found by the court, then we would not deny her application for asylum in the exercise of discretion. *See generally Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996). Accordingly, the Board's decision in this case dated May 28, 2002, is vacated, the application for asylum is granted, and the deportation proceedings are terminated. In view of the termination of proceedings, any application for withholding of deportation is moot. *See Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987).

FOR THE BOARD