(b) (6)

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

In the Matter of	
(b) (6)	**IN REMOVAL PROCEEDINGS**
RESPONDENT	

CHARGE: Section 237(a)(1)(b) of the Immigration and Nationality Act, as amended, in that after admission as a nonimmigrant under Section 101(a)(15) of Act, alien has remained in the United States for a time longer than permitted.

APPLICATION: Section 208 of the Immigration and Nationality Act: Asylum

On Behalf of the Respondent
Roberto Matus, Esq.
(b) (6)

On Behalf of the Department[1]
Matt Gordon, Esq.
Assistant Chief Counsel
Department of Homeland Security
(b) (6)

[1] Pursuant to its reorganization under the Department of Homeland Security, the former Immigration & Naturalization Service ("INS") has been divided into three bureaus: U.S. Customs and Border Protection ("CBP"), which monitor's the nation's borders; U.S. Citizenship and Immigration Services (USCIS"), which processes applications for citizenship, permanent residency, and asylum; and U.S. Immigration and Customs Enforcement ("ICE"), which investigates immigration law violations and litigates in deportation and removal proceedings. All three bureaus were incorporated into the Department of Homeland Security. For sake of consistency, the components that comprised the former INS will be referred to as "the Department." See 8 C.F.R. § 1.1(u)-(z).

(b) (6)

WRITTEN DECISION AND ORDER OF THE IMMIGRATION JUDGE

(b) (6) ("Respondent") is a native and citizen of Colombia. She entered the United States on a nonimmigrant B2 visas on November 8, 2003 at Miami, Florida and was subsequently charged with removability on the grounds that she overstayed her visa. Respondent conceded removability and sought relief in the form of political asylum and withholding of removal under both the Immigration and Nationality Act ("Act") and the Convention Against Torture. On December 20, 2004, the Court issued an oral decision denying Respondent's applications for relief. Respondent appealed the Court's decision to the Board of Immigration Appeals and later the (b) (6) (b) (6) The (b) (6) issued a decision on (b) (6) remanding the case to the Court for further findings as to the extent and severity of the persecution experienced by Respondent as well as the extent to which Respondent had established that local government authorities were unable or unwilling to protect her. See (b) (6) (b) (6) The (b) (6) also found that the Court had failed to make an express finding on the issue of Respondent's credibility. Id.

On (b) (6), following a successful petition for rehearing from the government, the (b) (6) withdrew its (b) (6) decision and substituted a new decision in its place. See (b) (6) In the revised decision, the (b) (6) remanded the case to this Court for a determination as to whether Respondent was able to establish that local government authorities were unable or unwilling to protect her. See Id. (citing Matter of S-A-, 22 I&N Dec. 1328, 1335 (BIA 2000)).

Upon review of the Respondent's case, the Court finds that Respondent is eligible for asylum under section 208 of the Immigration Nationality Act. Respondent's testimony and the documentary evidence submitted to the Court establish that Respondent is unable or unwilling to return to her native country because of a well-founded fear of persecution on account of her political opinion. See section 208(b)(1) of the Act; section 101(a)(42)(A) of the Act. While the transcript of the Court's original oral decision does not include the Court's express finding as to Respondent's credibility, the audiotapes of the oral decision indicate that the Court did in fact find the Respondent to be credible overall.[2] The Court now finds that this testimony and Respondent's documentary evidence demonstrates that the authorities in Respondent's home country are unable or unwilling to protect the Respondent. Accordingly, Respondent has shown that she is unable to avail herself of the protection of her home country. (b) (6) supra, at (b) (6) (citing Mazariegos v. U.S. Att'y Gen., 241 F.3d 1320, 1327 (11th Cir. 2001)). The Court also finds that Respondent merits a favorable exercise of discretion and therefore grants Respondent's request for political asylum.[3] The Department has indicated that it accepts the Court's decision in this matter and will not be filing an appeal.

In light of the foregoing, the following orders will be entered:

[2] The Court's express finding as to credibility should have appeared on page 9 of the transcript of the December 20, 2004 oral decision. However, it appears the transcriber recorded the credibility finding as "indiscernible."

[3] Respondent withdrew his application for withholding of removal under section 241(b)(3) of the Act at a post-remand hearing conducted on January 28, 2009. Respondent's application for withholding of removal under the Convention Against Torture was deemed waived by the Board of Immigration Appeals in its decision dated April 24, 2006.

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ORDERS OF THE IMMIGRATION JUDGE

WHEREFORE, IT IS HEREBY ORDERED that the charge that appears in the Notice to Appear is **SUSTAINED** and Respondent's removability established.

IT IS HEREBY FURTHER ORDERED that Respondent's application for Asylum pursuant to section 208 of the Immigration and Nationality Act shall be **GRANTED**.

DATED this 29 day of April, 2009

Elisa M. Sukkar

Honorable Elisa M. Sukkar
Immigration Judge

CC: Roberto Matus, Esq.

(b) (6)

Matt Gordon, Esq.
Assistant Chief Counsel
Department of Homeland Security

(b) (6)

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

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6)

Date: MAY - 1 2008

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Roberto Matus, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture

ORDER:

PER CURIAM. This case was last before us on April 24, 2006, when we dismissed the respondent's appeal from an Immigration Judge's decision denying her application for asylum and withholding of removal, and her request for protection under the Convention Against Torture. The matter is now before us pursuant to the (b) (6) decision of the United States Court of Appeals for the (b) (6) (b) (6)
The court agreed with the respondent that neither the Immigration Judge nor the Board had addressed the question whether the respondent has shown that the Colombian authorities would be unable or unwilling to protect her, and for that reason she could not rely on them, and her failure to report the harm could be excused. *See Matter of S-A-*, 22 I&N Dec. 1328, 1335 (BIA 2000).

In view of the court's decision, a remand is necessary, so that the Immigration Judge may make the findings required by the court in the first instance. Accordingly, the decision of the Board dated April 24, 2006, 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