post hearing biometric instructions served on respondent and counsel by PTB. 9/29/05

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 9/29/05.
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 _____ or in the 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[X] Respondent's application for asylum was (X) granted ( ) denied ( ) withdrawn ( ) other.
[X] Respondent's application for withholding of removal was ( ) granted ( ) denied ( ) withdrawn (X) other. moot
[ ] Respondent's application for cancellation of removal under section 240A(a) was ( ) granted ( ) denied ( ) withdrawn ( ) other.
[ ] Respondent's application for cancellation of removal under section 240A(b) was ( ) granted ( ) denied ( ) withdrawn ( ) other. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
[ ] Respondent's application for a waiver under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn ( ) other.
[ ] Respondent's application for adjustment of status under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn ( ) other. If granted, it was ordered that respondent be issued all appropriate documents necessary to give effect to this order.
[ ] Respondent's status was rescinded under section 246 of the INA.
[ ] 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:

Appeal Waived Reserved: A / I / B
Appeal due by:_____

Bette Kane Stockton
Immigration Judge

Date: 9/29/05

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL [ ] PERSONAL SERVICE [X]✓
TO: [ ] ALIEN [ ] ALIEN'S ATTY/REP [X] DHS PTB
DATE: 9/29/05 BY: COURT STAFF BKS

File: (b) (6)

Date: APR - 6 2005

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Robert B. Jobe, Esquire

APPLICATION: Asylum; withholding of removal

ORDER:

PER CURIAM. This case was last before us on December 18, 2002, when we summarily affirmed, without opinion, the results of the Immigration Judge's decision denying the respondent's application for asylum and withholding of removal. The Immigration Judge found that the harm suffered by the respondent was inflicted on account of his Indian ethnicity, but concluded that the harm did not rise to the level of past persecution.

On (b) (6) the United States Court of Appeals for the (b) (6) reversed the Immigration Judge's decision, concluding that the harm did constitute past persecution. Noting that the Immigration Judge did not apply the presumption of future persecution, the court remanded for consideration of evidence regarding current conditions in Fiji. The court further directed that the motion to remand filed by the respondent while his case was on appeal to the Board, to consider newly available evidence regarding conditions in Fiji, be considered.

In light of the court's finding that the respondent suffered past persecution, we find that a remand is appropriate to allow both parties the opportunity to present and develop evidence regarding current country conditions in Fiji, and how those conditions might affect this respondent's application for asylum. *See Lopez v. Ashcroft*, 366 F.3d 799 (9th Cir. 2004). This evidence may of course include the evidence presented by the respondent in support of his previous motion to remand. As past persecution has been shown, the burden of proof now shifts to the Department of Homeland Security to rebut the presumption of future persecution. 8 C.F.R. § 1208.13(b)(1)(ii).

Accordingly, the decision of the Board in this case dated December 18, 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