File: (b) (6)

Date:

In re: (b) (6)

MAR - 2 2005

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Rhoda Wilkinson Domingo, Esquire

ON BEHALF OF DHS: Audrey Lozuk-Lawless
Assistant District Counsel

APPLICATION: Reopening

ORDER:

PER CURIAM. In a decision dated (b) (6), the United States Court of Appeals for the (b) (6) affirmed the Board's decision to deny the respondent's motion to reopen his in absentia removal proceedings to seek asylum and withholding of removal because he did not show that his failure to appear was due to exceptional circumstances. However, the court reversed the Board's denial of the motion to reopen to seek protection under the Convention Against Torture (CAT). The court noted, *inter alia*, that is "difficult to see how (b) (6) allegations and supporting evidence do not establish *prima facie* eligibility under CAT." It remanded the record for the Board to reconsider the CAT motion, and it noted that it, "may behoove the Board to allow (b) (6) an opportunity to present his case in a hearing format."

In view of the court's decision and upon further review of the record, we will grant the respondent's motion to reopen to seek CAT protection. Accordingly, the decision of the Board dated March 27, 2003, is vacated, and the decision of the Board dated July 19, 2002, is vacated insofar as it denies the respondent's motion to reopen to seek CAT protection. The motion to reopen to seek protection under the Convention Against Torture is hereby granted, the removal proceedings are reopened, and the record is remanded to the Immigration Judge for a further hearing consistent with this decision and with the decision of the court.

FOR THE BOARD

U.S. DEPARTMENT OF JUSTICE
IMMIGRATION COURT

(b) (6)

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

Case Number: (b) (6)

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on June 3, 2011. 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_____.
[ ] Respondent's application for asylum was ( ) granted ( ) denied ( ) withdrawn ( ) other.
[ ] Respondent's application for withholding of removal was ( ) granted ( ) denied ( ) withdrawn ( ) other.
[ ] Respondent's application for [ ]withholding of removal [ ]deferral of removal under Article III of the Convention Against Torture was ( )granted ( )denied ( )withdrawn ( )other
[ ] 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 245 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: A / I / B
Appeal due by: waived

Date: 6/3/11

Phan-Quang Tue
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL [ ] PERSONAL SERVICE [✓]
TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [✓] ALIEN'S ATTY/REP [✓] DHS
DATE: 6/3/11 BY: COURT STAFF EJ
Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

TPQ/MM/8