File: (b) (6) Date: SEP 30 2010

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Stuart Altman, Esquire

ON BEHALF OF DHS: Khalilah M. Taylor
Senior Attorney

CHARGE:

Notice: Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] - Immigrant - no valid immigrant visa or entry document

APPLICATION: Asylum; withholding of removal

This case was last before us on December 17, 2007, when we held that the respondent is statutorily barred from asylum as a persecutor of others and denied her claim for protection under the Convention Against Torture ("CAT"). The respondent filed a petition for review in the United States Court of Appeal for the (b) (6) The (b) (6) affirmed our decision with respect to the CAT. However, the Court ruled that the respondent is not subject to the persecutor bar under sections 208(b)(2)(A)(i) and 241(b)(3)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(2)(A)(i), 1231(b)(3)(B)(i). The (b) (6) remanded the case to the Board to determine, in the first instance, whether the respondent is eligible for asylum and withholding of removal. (b) (6) *v. Holder*, (b) (6) . Upon remand, the respondent and the Department of Homeland Security ("DHS") have filed briefs. The case will be remanded for further proceedings.

The respondent alleges past persecution by the Chinese government because, when working as maternity ward nurse, she helped a woman escape from the hospital to avoid a forced abortion. The respondent did not herself suffer a forced abortion or sterilization and does not allege a fear of such a procedure in the future. Thus, she is not per se eligible for asylum. *Matter of M-F-W- & L-G-*, 24 I&N Dec. 633, 637 (BIA 2008). To warrant asylum, she must show that she was or will be persecuted for "other resistance" to China's family planning policy. *Id.* The respondent argues that she showed opposition to the family planning policy and that the Chinese government imputed a political opinion to her that she is in violation of the policy, and thus, she is a person who has been persecuted for other resistance to a coercive population control program. The respondent, however, was never arrested or detained. Nor has she alleged that she suffered extreme conduct that would rise to the level of persecution. *Id.* at 639 (stating that even if an alien can show resistance, it is still necessary to establish that any resulting punishment constitutes persecution and not merely harassment or discomfort).

The respondent also alleges a well-founded fear of persecution because her parents told her before she left China that family planning officials were looking for her and told them that she should surrender or the penalty would be heavier. The DHS argues on appeal that the respondent has not demonstrated "other resistance" to the family planning policy because she did not vocally oppose or personally engage in acts to thwart the policy. In addition, the DHS argues that there is no evidence that the Chinese government is still interested in the respondent, and the respondent could relocate to another area of China. Because the Immigration Judge found the respondent statutorily ineligible for asylum as a persecutor of others and did not rule on the issues of well-founded fear of persecution and internal relocation, we find that a remand for further fact finding and the entry of a new decision is warranted. 8 C.F.R. § 1003.1(d). The parties should be permitted to supplement the record, if deemed necessary and appropriate by the Immigration Judge.

Accordingly, the following order is entered.

ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

FOR THE BOARD