Files: (b) (6) Date: AUG 9 2013

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Jason B. Taub, Esquire

APPLICATION: Administrative closure

This case is before the Board pursuant to a (b) (6) order of the United States Court of Appeals for the (b) (6) which remanded the case to the Board to administratively close these proceedings based upon the Department of Homeland Security's exercise of prosecutorial discretion.[1] The proceedings will be administratively closed.

If either party to this case wishes to reinstate the proceedings, a written request to reinstate the proceedings may be made to the Board. **The Board will take no further action in the case unless a request is received from one of the parties.** The request must be submitted directly to the Clerk's Office, without fee, but with certification of service on the opposing party.

Accordingly, the following order will be entered.

ORDER: The proceedings before the Board of Immigration Appeals in this case are administratively closed.

FOR THE BOARD

[1] Some of the records of proceedings could not be located and were reconstructed from the certified administrative record.

Files: (b) (6)

Date: MAY 21 2012

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Jason B. Taub, Esquire

ON BEHALF OF DHS: David J. Kelly
Senior Attorney

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -
Present without being admitted or paroled (all respondents)

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondents are natives and citizens of El Salvador. The lead respondent (b) (6) is the wife of the adult co-respondent (b) (6) and the remaining co-respondents are their children. The respondents assert a well-founded fear of persecution on account of membership in the particular social group of "family members of those who actively oppose gangs in El Salvador by agreeing to be prosecutorial witnesses." In short, the claim is based on threats experienced by the adult co-respondent and his uncle in connection with their witnessing of a murder by the Salvadoran gang MS-13, and the uncle's decision to testify against the perpetrators. This matter is before the Board pursuant to a remand of the United States Court of Appeals for the (b) (6) *See* (b) (6) [1] The appeal of the Department of Homeland Security ("DHS") will be sustained.

Reversing the Board, the (b) (6) found that the respondents' proposed group of "family members of those who actively oppose gangs in El Salvador by agreeing to be prosecutorial witnesses" qualifies as a particular social group. *Id.* at (b) (6) The court further reversed the

[1] The complete factual and procedural history of the case is set forth in the decision. *Id.* at (b) (6)

Board in holding that the respondents established harm rising to the level of past persecution and an objectively reasonable well-founded fear of such harm. *Id.* at (b) (6)

The (b) (6) has remanded for the Board to consider two issues. The first relates to the respondents' burden of establishing that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting them. Section 208(b)(1)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(B)(i); *see also* section 241(b)(3)(C) of the Act, 8 U.S.C. § 1231(b)(3)(C) (the trier of fact shall determine whether an alien has sustained his or her burden of proving eligibility for withholding of removal and shall make credibility determinations in the manner described in clauses (ii) and (iii) of section 208(b)(1)(B) of the Act); *Matter of C-T-L-*, 25 I&N Dec. 341 (BIA 2010) (the "one central reason" standard that applies to asylum applications pursuant to section 208(b)(l)(B)(i) of the Act also applies to applications for withholding of removal under section 241(b)(3)(A) of the Act). The court observed that while the respondents need not show that the adult co-respondent's family ties provide "*the* central reason or even a dominant central reason" for his persecution, they must demonstrate that these ties are more than "an 'incidental, tangential, superficial, or subordinate' reason" for his persecution. (b) (6) *supra*, at (b) (6) (*quoting Quinteros-Mendoza v. Holder*, 556 F.3d 159, 164 (4th Cir. 2009) (*quoting Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 214 (BIA 2007)). The court asks whether the Immigration Judge's finding that "[a]t least one central reason why the gang members targeted (b) (6) was because of his uncle's cooperation with the Salvadoran government" is clearly erroneous. (b) (6) *supra*, at (b) (6) *see also* 8 C.F.R. § 1003.1(d)(3)(i).

The DHS argues that the Immigration Judge distorted the evidence in concluding that "at least one central reason why the gang members targeted (b) (6) was because of his uncle's cooperation with the Salvadoran government" (DHS Brief on Remand at 7-11). The DHS claims that the only central reason gang members persecuted the adult co-respondent was to deter him from testifying against them, and not due to his relationship with his uncle. In response, the respondents argue that the finding that "at least one central reason why the gang members targeted (b) (6) was because of his uncle's cooperation with the Salvadoran government" is not clearly erroneous (Respondents' Remand Brief at 13-18). Furthermore, they assert that possible additional reasons held by the gang members for targeting the adult co-respondent do not render the Immigration Judge's finding clearly erroneous (Respondents' Remand Brief at 18-20).

In (b) (6) the court recites the following facts relevant to this issue:

> (b) (6) heard the shots as he was walking towards his uncle's house, and he witnessed four MS-13 members fleeing the scene. After arriving at his uncle's house (b) (6) described the four men to the police; his description matched the one provided by (b) (6) uncle, who had witnessed the murder.
>
> Two weeks later, another shooting occurred in Sonsonate [the respondents' hometown in El Salvador], and the police connected it to the murder of (b) (6) cousin. They summoned (b) (6) and his uncle to the police station, where (b) (6) saw two of his cousin's four attackers, whom the police had arrested, sitting on a bench inside. The two gang members watched (b) (6) and his uncle enter a

> detective's office, at which point (b) (6) informed the detective that he recognized both attackers. (b) (6) and his uncle then agreed to testify against the two men.

(b) (6) *supra*, at (b) (6) The court also recounts the three occasions when MS-13 threatened the adult co-respondent:

> The first threat came soon after his encounter with his cousin's attackers at the police station; gang members slipped a note under his door declaring that he would be "next" if he persisted in his cooperation with the police. Upon finding the note, (b) (6) and his family fled Sonsonate for a relative's home in San Salvador. When (b) (6) returned to Sonsonate the next month to collect his mail, inside his house he found another note proclaiming that the gang would kill him if he "went to court." Finally, as (b) (6) drove through Sonsonate later that month, he encountered one of his cousin's killers, who shouted that "you need to shut up or we are going to kill you."

Id. The court's factual recitation tracks the Immigration Judge's factual findings (I.J. at 4-5).

The Immigration Judge's factual findings, as summarized by the (b) (6) demonstrate that MS-13 threatened both the adult co-respondent and his uncle. All the threats against the adult co-respondent were about him testifying or cooperating with the police; the threats do not reference his uncle. The Immigration Judge's factual findings show that MS-13 targeted the adult co-respondent because of his own actions. Therefore, we hold that the Immigration Judge's finding that "[a]t least one central reason why the gang members targeted (b) (6) was because of his uncle's cooperation with the Salvadoran government" is clearly erroneous. *Id.* at (b) (6) *see also* 8 C.F.R. § 1003.1(d)(3)(i).

In light of our holding, the respondents are ineligible for asylum and withholding of removal. *See* sections 208(b)(1)(B)(i) and 241(b)(3)(C) of the Act; *Matter of C-T-L-*, *supra*. Consequently, we express no opinion on the second question posed by the circuit court remand: whether the Immigration Judge's implicit finding that "attempts by the Salvadoran government to control gang violence have proved futile" is clearly erroneous. (b) (6) *supra*, at (b) (6) *see also* 8 C.F.R. § 1003.1(d)(3)(i). We also need not speak to the DHS's alternative argument regarding the respondents' ability to avoid persecution by relocating within El Salvador (DHS Brief on Remand at 11-12). *See* 8 C.F.R. §§ 1208.13(b)(i)(B) and 1208.16(b)(1)(i)(B). Likewise, we need not address the DHS's alternative request that the record be remanded to update the stale country conditions evidence pertaining to whether the Salvadoran government is unwilling or unable to protect the respondents from harm (DHS Brief on Remand at 12-14).

Accordingly, the following order is entered.

ORDER: The appeal is sustained, the grant of asylum is vacated, and the respondents are ordered removed to El Salvador in accordance with the finding of removability.

FOR THE BOARD