IMMIGRATION COURT

In the Matter of

(b) (6)

Case No.: (b) (6)

(b) (6)

Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Jun 30, 2005. 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 or in the alternative 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 alternate order of removal to

Respondent's application for:

[ ] Asylum was ( ) granted ( ) denied ( ) withdrawn

[ ] Withholding of removal was ( )granted ( ) denied ( ) withdrawn

[ ] A Waiver under Section _____ was ( ) granted ( ) denied ( ) withdrawn

[ ] Cancellation under Section 240A(a) was ( )granted ( )denied ( )withdrawn

Respondent's application for:

[ ] Cancellation under Section 240A(b)(1) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Cancellation under Section 240A(b)(2) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Adjustment of Status under Section _____ was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Respondent's application of ( ) withholding of removal ( ) deferral of removal under Article III of the Convention Against Torture was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's status was rescinded under section 246.

[ ] 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: _____

Date: Jun 30, 2005

ISABEL BRANZINA
Immigration Judge

CAO

File: (b) (6) Date: MAY 16 2005

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Augie Kreivenas, Esquire

APPLICATION: Asylum; withholding of removal; protection under the Convention Against Torture

ORDER:

PER CURIAM. This case is presently before us pursuant to the (b) (6) decision of the United States Court of Appeals for the (b) (6) The court reversed the Immigration Judge's adverse credibility finding, which was upheld by the Board. The court remanded the case for further consideration of the respondent's application for asylum and withholding of removal, and his request for protection under the Convention Against Torture (CAT).

Taking the respondent's testimony as true, we find him eligible for asylum. The respondent testified that he was an active member of an opposition party in Sudan, and that as a result, he was beaten on many occasions during demonstrations and while in detention. The respondent's testimony also reflects that the detentions sometimes involved brutal torture. Without doubt, the horrendous treatment the respondent received while being detained constituted past persecution on account of a protected ground.

A review of the 2004 Department of State *Country Report* for Sudan states that the country's human rights record remains "extremely poor." Security forces commit numerous human rights abuses and act with impunity. There is no right to peacefully oppose the government and the security forces regularly beat, harass, and detain opponents or suspected opponents of the government. There are credible reports of torture inflicted by the security forces. Given this situation, we find that the presumption of future persecution has not been rebutted.

Accordingly, decision of the Board in this case dated September 23, 2002, is vacated. The respondent is eligible for asylum, dependent upon the required security checks, and the record does not reflect that a denial of asylum in the exercise of discretion is warranted in his case. *See generally Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996). Further, the respondent is eligible for withholding of removal from Sudan. Given today's decision, the request for protection under the Convention Against Torture is moot. *See generally Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987).

(b) (6)

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h). *See* Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals, 70 Fed. Reg. 4743, 4752-54 (Jan. 31, 2005).

FOR THE BOARD