UNITED STATES DEPARTMENT OF JUSTICE

IMMIGRATION COURT

(b) (6)

In the Matter of: (b) (6) File (b) (6)

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of:

RESPONDENT'S MOTION TO TERMINATE BASED ON RESPONDENT'S RECEIPT OF DEFERRED ACTION STATUS

it is HEREBY ORDERED that the motion be **GRANTED** / **DENIED** because:

X DHS does not oppose the motion.
A response to the motion has not been filed with the court.
Good cause has been established for the motion.
The court agrees with the reasons stated in the opposition to the motion.
The motion is untimely per:
Other:

Deadlines:
The application(s) or relief must be filed by
The respondent must comply with DHS biometrics instructions by

4.7.14
Date

Immigration Judge

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Date: APR 7 2014

By: Court Staff

File: (b) (6)

Date: MAR 15 2012

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Paula J. Solorio, Esquire

ON BEHALF OF DHS: Lisa M. Calero
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] -
In the United States in violation of law

APPLICATION: Asylum; withholding of removal; Convention Against Torture

This case is before us on remand from the United States Court of Appeals for the (b) (6) pursuant to a (b) (6), decision granting the respondent's petition for review. (b) (6) *v. Holder*, (b) (6) It was last before us on December 20, 2006, when we dismissed the respondent's appeal from the Immigration Judge's decision denying his applications for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"), but granting voluntary departure. The record will be remanded.

Upon review of our last decision, the (b) (6) reversed our nexus determination, holding that the respondent's repeated exposure of the government corruption to his supervisor and the retaliation he suffered qualifies him as a whistleblower, even though he did not report the corruption to an outside agency. *See* (b) (6) *v. Holder*, (b) (6) Consequently, the (b) (6) (b) (6) granted the respondent's petition for review and remanded the record to us "for consideration of whether the government has met its burden to rebut the presumption that the [respondent] has a well-founded fear of future persecution on the basis of his whistleblowing activities." *Id.* at (b) (6) The (b) (6) also vacated our decision denying CAT relief, holding that we improperly placed the burden on the respondent to show that he could not relocate within Mexico and did not apply the presumption of a nationwide threat. *Id.*

(b) (6)

On remand, the Department of Homeland Security (the "DHS") asks us to remand the record to the Immigration Judge for further testimony and to consider recent country conditions. The respondent opposes a remand.

We are not persuaded by the respondent's arguments opposing a remand to the Immigration Judge. Consideration whether the government can rebut the presumption of past persecution requires further fact-finding. The respondent cites to *Baballah v. Ashcroft*, 367 F.3d 1067, in which the (b) (6) declined to remand to the Board under *INS v. Ventura*, 537 U.S. 12 (2002), to consider whether changed country conditions rebut the petitioner's well-founded fear of persecution. 367 F.3d at 1078, 1078 n. 11 (9th Cir. 2004). In *Baballah*, the (b) (6) noted that the INS did not present evidence of changed conditions or argue before the Immigration Judge or the Board that changed country conditions would eliminate the petitioner's fear of future persecution. 537 F.3d at 1078 n. 11. In this case, by contrast, the (b) (6) did remand to the Board for consideration of changed country conditions, citing *Ventura*. 648 F.3d at 958.

The respondent also argues that a remand to the Immigration Judge is outside the scope of the (b) (6) order, emphasizing that the order remands for the Board to consider whether the government "has met its burden" to rebut the presumption of a well-founded fear. We are not persuaded that the (b) (6) use of the past tense requires that the issue of changed circumstances must be evaluated based upon evidence that is already in the record. Because the (b) (6) did not explicitly indicate that the record could not be remanded to update the country conditions evidence, and because we have limited fact-finding ability on appeal, we will remand the record for the Immigration Judge to assess the facts and decide whether a fundamental change in country conditions has overcome the presumption that the respondent has a well-founded fear of future persecution.

On remand, the Immigration Judge should also further consider the respondent's application for protection under the CAT, consistent with the (b) (6) order. The parties should be allowed to submit additional evidence on remand. Accordingly, the following order will be entered.

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

FOR THE BOARD