File: (b) (6) [redacted] Date: AUG 29 2011

In re: (b) (6) [redacted]

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Robert B. Jobe, Esquire

ON BEHALF OF DHS: Michael D. Steinberg
Senior Attorney

APPLICATION: Reopening

ORDER:

The respondent has filed a timely motion to reopen seeking a further opportunity to establish his eligibility for relief from removal. The Department of Homeland Security (DHS) states that the DHS is not opposed to the respondent's motion. The unopposed motion is granted and the proceedings are reopened to provide the respondent a further opportunity to apply for relief from removal.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings not inconsistent with this order and entry of a new decision.

FOR THE BOARD

File: (b) (6)

Date: NOV - 1 2010

In re: (b) (6)

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Robert B. Jobe, Esquire

ON BEHALF OF DHS Michael D. Steinberg
Senior Attorney

This case is before the Board on remand from the United States Court of Appeals for the (b) (6) (b) (6) In (b) (6) *v. Holder*, (b) (6) the court remanded the case to the Board. Both parties have filed briefs concerning the court's decision.[1] Upon further consideration, the Board's May 7, 2004, decision in this case will be reissued.

An Immigration Judge on March 28, 2003, denied the respondent's application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. §1229b(b). The Board affirmed the Immigration Judge's decision without opinion on May 7, 2004. On November 28, 2005, the Board denied the respondent's request that the Board reissue its May 7, 2004, decision, as the respondent was removed from the United States after filing the motion.

In (b) (6) *v. Holder*, *supra*, at (b) (6) the (b) (6) determined that 8 C.F.R. § 1003.2(d) cannot be applied to cause the withdrawal of a motion filed by an alien who has been forcibly removed while the motion is pending before the Board. The court remanded the case to the Board for further consideration of the respondent's reissuance motion.

The respondent seeks reissuance based on a claim of ineffective assistance of counsel, and makes assertions against counsel who represented him at the time of the Board's May 7, 2004, decision. The Board has considered the respondent's affirmative representations concerning events at the time he learned of the Board's May 7, 2004, decision, and has taken into account the circuit in which this case arises. Given the totality of the circumstances presented in the motion, the Board will reissue the May 7, 2004, decision in these proceedings.

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[1] The Board has considered the parties' briefs on remand, as well as the Department of Homeland Security's (the "DHS") reply brief, and respondent's "Supplement to Motion to Reopen and Reply to Government's Reply Brief."

(b) (6)

ORDER: The respondent's motion to reissue is granted.

FURTHER ORDER: A final order in the matter is hereby issued as of this date, incorporating by reference the text of the attached vacated order of May 7, 2004.

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, the respondent is permitted to voluntarily depart the United States, without expense to the Government, within 60 days from the date of this order or any extension beyond that time as may be granted by the DHS. *See* section 240B(b) of the Act; *see also* 8 C.F.R. §§ 1240.26(c), (f). In the event the respondent fails to voluntarily depart the United States, the respondent shall be removed as provided in the Immigration Judge's order.

NOTICE: If the respondent fails to voluntarily depart the United States within the time period specified, or any extensions granted by the DHS, the respondent shall be subject to a civil penalty as provided by the regulations and the statute and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Act. *See* section 240B(d) of the Act.

WARNING: If the respondent files a motion to reopen or reconsider prior to the expiration of the voluntary departure period set forth above, the grant of voluntary departure is automatically terminated; the period allowed for voluntary departure is not stayed, tolled, or extended. If the grant of voluntary departure is automatically terminated upon the filing of a motion, the penalties for failure to depart under section 240B(d) of the Act shall not apply. *See* Voluntary Departure: Effect of a Motion To Reopen or Reconsider or a Petition for Review, 73 Fed. Reg. 76,927, 937-38 (Dec. 18, 2008) (codified at 8 C.F.R. § 1240.26(c)(3)(iii), (e)(1)(2010)).

WARNING: If, prior to departing the United States, the respondent files any judicial challenge to this administratively final order, such as a petition for review pursuant to section 242 of the Act, 8 U.S.C. § 1252, the grant of voluntary departure is automatically terminated, and the alternate order of removal shall immediately take effect. However, if the respondent files a petition for review and then departs the United States within 30 days of such filing, the respondent will not be deemed to have departed under an order of removal if the alien provides to the DHS such evidence of his departure that the Immigration and Customs Enforcement Field Office Director of the DHS may require and provides evidence DHS deems sufficient that he has remained outside of the United States. The penalties for failure to depart under section 240B(d) of the Act shall not apply to an alien who files a petition for review, notwithstanding any period of time that he remains in the United States while the petition for review is pending. *See* 73 Fed. Reg. at 76938 (codified at 8 C.F.R. § 1240.26(i)(2010)).

FOR THE BOARD