Files: (b) (6)

Date: MAR 18 2008

In re: (b) (6)

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENTS: Mario M. Lovo, Esquire

By decision dated December 6, 2007, the Board denied the respondents' appeal of an Immigration Judge's March 28, 2007, decision. The respondents have now filed a motion for reconsideration of our decision. The motion will be denied.

A motion to reconsider a decision of the Board of Immigration Appeals must include, *inter alia*, the following: (1) an allegation of material factual or legal errors in the prior decision that is supported by pertinent authority; and (2) if there has been a change in law, a reference to the relevant statute, regulation, or precedent and an explanation of how the outcome of the Board's decision is materially affected by the change. *Matter of O-S-G-*, 24 I&N Dec. 56, 57 (BIA 2006).

Upon review of our prior decision denying the respondents' appeal, we find no error in that decision. The respondents have raised no argument in the motion to reconsider which would cause us to reverse that decision. We find no new legal argument presented nor any particular aspect of the case that was overlooked in our previous decision. Accordingly, the motion for reconsideration will be denied.

ORDER: The motion for reconsideration is denied.

FOR THE BOARD

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6)

Date: DEC - 6 2007

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Lovo, Mario M., Esq.

ORDER:

PER CURIAM. We adopt and affirm the decision of the Immigration Judge. See Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994) (noting that adoption or affirmance of a decision of an Immigration Judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those the Immigration Judge articulated in his or her decision"). We do not find the Immigration Judge's adverse credibility finding to be clearly erroneous. See generally 8 C.F.R. 1003.1(d)(3)(i)(stating that the Board shall review factual determinations, including credibility findings, "only to determine whether the findings of the Immigration Judge are clearly erroneous"). In particular we note the inconsistency regarding when the lead respondent joined the party and the lack of detail in his testimony concerning his political beliefs. Accordingly, the appeal is dismissed.

FOR THE BOARD

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6) Date: DEC - 6 2007

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Lovo, Mario M., Esq.

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FOR THE BOARD

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) Date:

In re: (b) (6) DEC - 6 2007

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Lovo, Mario M., Esq.

ORDER:

PER CURIAM. We adopt and affirm the decision of the Immigration Judge. See Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994) (noting that adoption or affirmance of a decision of an Immigration Judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those the Immigration Judge articulated in his or her decision"). We do not find the Immigration Judge's adverse credibility finding to be clearly erroneous. See generally 8 C.F.R. 1003.1(d)(3)(i)(stating that the Board shall review factual determinations, including credibility findings, "only to determine whether the findings of the Immigration Judge are clearly erroneous"). In particular we note the inconsistency regarding when the lead respondent joined the party and the lack of detail in his testimony concerning his political beliefs. Accordingly, the appeal is dismissed.

FOR THE BOARD

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6)

In re: (b) (6)

Date: DEC - 6 2007

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Lovo, Mario M., Esq.

ORDER:

PER CURIAM. We adopt and affirm the decision of the Immigration Judge. See Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994) (noting that adoption or affirmance of a decision of an Immigration Judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those the Immigration Judge articulated in his or her decision"). We do not find the Immigration Judge's adverse credibility finding to be clearly erroneous. See generally 8 C.F.R. 1003.1(d)(3)(i)(stating that the Board shall review factual determinations, including credibility findings, "only to determine whether the findings of the Immigration Judge are clearly erroneous"). In particular we note the inconsistency regarding when the respondent joined the party and the lack of detail in his testimony concerning his political beliefs. Accordingly, the appeal is dismissed.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
(b) (6)

IN THE MATTER OF:

(b) (6)

In Removal Proceedings

RESPONDENTS

CHARGES: Section 237(a)(1)(B) of the Immigration and Nationality Act as non-immigrants who have remained in the United States for a time longer than permitted.

APPLICATIONS: Section 208 of the Immigration and Nationality Act: Asylum.

Section 241(b)(3) of the Immigration and Nationality Act: Withholding of Removal.

8 C.F.R. § 1208.16: Withholding of Removal under the Convention Against Torture.

On Behalf of the Respondent:
Anthony Alvarez, Esq.
(b) (6)

On Behalf of the Department:

Assistant Chief Counsel
U.S. Immigration & Customs Enforcement
(b) (6)

Decision of the immigration judge

I. Procedural History

The respondents are a 39-year-old married male, 37-year-old married female, 11-year-old and 9-year-old minor children. All are natives and citizens of Colombia. They were admitted to the United States at Miami, Florida on July 24, 2000 as visitors for pleasure. They were given temporary authorization to remain in the United States until January 23, 2001. The Respondents remained beyond that date without the authorization of the Department of Homeland Security ("Department").

On August 12, 2002, the Department issued respondents a notice to appear ("NTA") in removal proceedings under Section 240 of the Immigration and Nationality Act ("Act"). Respondents were served by mail on August 20, 2002. Exhibit 1. They were charged with being removable for overstaying their temporary admission as nonimmigrants in violation of Section 237(a)(1)(B) of the Act.

The case was referred to the United States Immigration Court in (b) (6) Respondents were represented by counsel. At a master calendar hearing on April 1, 2003, Respondents admitted the allegations and conceded the charges contained in the NTA. The Court finds that removability has been established by clear and convincing evidence. See Woodby v. INS, 385 U.S. 276 (1966); INA § 240(c)(3)(a).

As relief from removal Respondents have requested asylum, withholding of removal, and relief under the torture convention.

II. Facts

The principal respondent who testified in this case was the husband ("Respondent"). He testified that he was born in Cali, Colombia, and his wife was born in Barranquilla, Colombia. Respondent testified that he is 39, his wife is 37, and his children are 9 and 11. He last entered the

United States on July 24, 2000. He had previously visited the United States on May 31, 1998; February 28, 1999; and August 31, 1999.

Respondent testified his family in the United States consists of a brother and uncle. His mother, father, and sister live in Colombia.

Respondent testified that he owned a print shop in Colombia from 1983-2000. He testified he completed his education through graphic design courses at the university.

He stated he was never arrested, convicted, imprisoned or tortured in Colombia or any other country.

In 1982, Respondent joined the Boy Scouts and remained an active member. His membership is supported by documentation in the record. However, he did not claim any persecution based on his participation in the Boy Scouts.

According to Respondent, he joined the Liberal Party of Colombia in 1989. His membership is documented by a letter from the Liberal Party. However, the letter states he had been a member for five years (since 1996). Respondent testified that, as a member of the Liberal Party, he spoke against the Front for Revolution and Forces in Colombia ("FARC") from 1989 to the present. He characterized FARC as a communist and terrorist group whose objective was to overthrow democracy. Respondent contended that he fought against FARC's communist tendencies by working to recruit new members and joining members in speaking against the communist entities. According to Respondent, he spoke in meetings, distributed flyers, and carried out propaganda against FARC.

The first problem Respondent claimed he had with FARC happened in 1989 while he and his brother were participating in a Liberal Party campaign for Julio Tortilla by printing free flyers. Apparently two FARC members confronted Respondent and his brother at their printing business and

told them to stop their work for the Liberal Party. FARC allegedly asked Respondent and his brother to print flyers for their organization but they refused. Then, Respondent claimed FARC threatened to kidnap his brother's wife if they did not cooperate.

After this incident, Respondent claimed he and his brother received threatening phone calls at their place of business from persons claiming FARC membership.

In 1990, Respondent claimed that he and his brother were leaving their business when they were cut off by a red car whose occupants fired at them. They believed the occupants of the car to be FARC members based on their dress and the harassing phone calls. Supposedly this incident led to Respondent's brother fleeing Colombia to seek protection from the United States in 1990. According to Respondent, his brother received asylum based on these incidents. However, his brother's immigration status was not documented by evidence nor was he present to testify on Respondent's behalf.

After his brother left, Respondent remained in Colombia to continue the business. He testified FARC continued to harass him. FARC allegedly broke into his business and stole his equipment in 1994 and then again in 1995. In reaction to the harassment, Respondent claimed he moved his business three times within the city of Cali but FARC continued to threaten him.

Finally, in July 2000, Respondent claimed that while he was driving with his wife and sister-in-law a car cut them off. The four occupants, who were wearing camouflage, purportedly shot at their car but Respondent and his family escaped unharmed. Apparently, this incident led Respondent to leave Colombia because it was "too close" and it was affecting his family.

Respondent testified that all of the information contained in his asylum application and his supporting documentation was true and correct.

III. Analysis

A. Asylum

Respondent bears the evidentiary burden of proof and persuasion in connection with his asylum application.[1] 8 C.F.R. § 1208.13(a); Matter of S-M-J-, 21 I&N Dec. 722, 724 (BIA 1997); Matter of Acosta, 19 I&N Dec. 211, 215 (BIA 1985), *modified on other grounds;* Matter of Mogharrabi, 19 I&N Dec. 439, 446 (BIA 1987), *abrogated on other grounds*. To be eligible for asylum, Respondent must credibly demonstrate that he is a "refugee." See INA § 208(b)(1); see also INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(a). To be considered a refugee, Respondent must demonstrate that he has suffered or has a well-founded fear of persecution "on account of race, religion, nationality, membership in a particular social group, or political opinion." INA § 101(a)(42)(A); INS v. Elias-Zacarias, 502 U.S. 478, 481 (1992). In addition, Respondent must establish that he is unable or unwilling to avail himself of the protection of Colombia and his fear of persecution is countrywide. INA § 101(a)(42)(A); Matter of Acosta, supra, at 235; Matter of C-A-L-, 21 I&N Dec. 754, 757 (BIA 1997); Matter of Fuentes, 19 I&N Dec. 658 (BIA 1988). Finally, Respondent must demonstrate that he is eligible for asylum as a matter of discretion. INA § 208(b)(1); INS v. Cardoza-Fonseca, 480 U.S. 421, 423 (1987).

1. Credibility

The Court must make a threshold determination of the Respondent's credibility. Matter of O-D- 21 I&N Dec. 1079, 1081 (BIA) 1998. Respondent's uncorroborated, but credible, testimony may be sufficient to sustain the burden of proof in his/her asylum claim. 8 C.F.R. §1208.13(a). Though a

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[1] An application for asylum "shall be deemed to constitute at the same time an application for withholding of removal, unless adjudicated in deportation or exclusion proceedings commenced prior to April 1, 1997." See 8 C.F.R. § 1208.3(b).

finding of credibility is not dispositive as to whether asylum should be granted, see Matter of E-P-, 21 I&N Dec. 860, 862 (BIA 1997), an adverse credibility determination alone may be sufficient to support the denial of Respondent's asylum application. D-Muhumed v. U.S. Att'y Gen., 388 F.3d 814, 819 (11th Cir. 2004); see Dia v. Ashcroft, 353 F.3d 228, 247 (3d Cir. 2003) (*en banc*) ("an alien's credibility, by itself, may satisfy his burden, or doom his claim"). Specific, cogent reasons must be given for an adverse credibility finding. D-Muhumed v. U.S. Att'y Gen., supra, at 819.

To assess credibility, the Court must determine whether Respondent's testimony is plausible, consistent, and sufficiently detailed to provide a coherent account of his claim. Matter of S-M-J-, supra, at 724; Matter of Dass, 20 I&N Dec. 120, 124 (BIA 1989); Matter of Mogharrabi, supra, at 446. Credible testimony is consistent with the asylum application and any asylum officer interview. See Chen v. U.S. Attorney General, 463 F.3d 1228 (11th Cir. 2006). Incredible testimony is inconsistent, contradictory with current country conditions, or inherently implausible. Matter of S-M-J-,supra; see D-Muhumed v. U.S. Att'y Gen, supra, (implausibility of alien's account may support an adverse credibility finding). An adverse credibility finding is warranted when: (1) discrepancies and omissions exist in the record; (2) these discrepancies and omissions provide specific and cogent reasons to conclude that the applicant provided incredible testimony; and (3) the applicant offers no convincing explanation for the discrepancies and omissions. Matter of A-S-, 21 I&N Dec. 1106, 1109 (BIA 1998). While omissions of facts in an asylum application may not, in themselves, support an adverse credibility finding, id., the omission of key events that form a significant part of the applicant's claim provide a specific and cogent reason to support an adverse credibility finding. D-Muhumed, supra, at 819; Forgue v. U.S. Att'y Gen., 401 F.3d 1282, 1287 (11th Cir. 2005); Ruiz v. Att'y Gen, 440 F.3d

1247, 1255 (11th Cir. 2006) (embellishment of claims during testimony may support an adverse credibility finding); See Matter of A-S-, supra, at 1110.

2. Corroborating Evidence.

Though Respondent's testimony alone can support his asylum claim, where it is reasonable to expect corroborating evidence such evidence should be provided. Matter of S-M-J-, supra, at 725. It is reasonable to expect Respondent to provide corroborative evidence when inconsistencies and omissions create serious doubts about Respondent's credibility. See Matter of S-B-, 21 I&N Dec. 1136, 1139 (BIA 1998). The weaker Respondent's testimony, the greater the need for corroborative evidence. Id; Yang v. U.S. Attorney General, 418 F.3d 1198, 1201 (11th Cir. 2005). If Respondent produces corroborating evidence of persecution, the Court must consider that evidence and may not deny relief based solely on an adverse credibility finding. Forgue v. U.S. Att'y Gen., supra, at 1287.

3. Adverse Credibility Finding

Respondent's application for asylum will be denied because Respondent did not provide a credible account of his claim. His testimony was inconsistent with his asylum application and interview with the asylum officer ("AO"), was not sufficiently detailed, and was inherently implausible. Respondent also omitted key events from his asylum application.

a. Respondent's testimony was not consistent

Respondent's testimony was not consistent with his supporting documents, asylum application, and AO interview.

Most important, there is a serious discrepancy over when Respondent joined the liberal party. Respondent testified that he was a member of the liberal party from 1989 until the present. However,

in a letter dated May 29, 2001, a party representative claimed that Respondent had been a member of the Liberal Party for five years (since 1996). When asked to explain this discrepancy, Respondent claimed that a mistake must have been made because party members were very busy and the letter does not "reflect the reality" of his involvement with the Liberal Party. The Court finds this explanation unlikely because the Party referred to Respondent by name and national identity number. Also, Respondent had almost three years between the date of the letter and his individual hearing in which he could have asked his family in Colombia to seek a correction of the document. This letter not only conflicts with Respondent's testimony and calls into question the level of his party involvement, but it also casts doubt upon Respondent's account of the 1990 shooting incident, the 1994 and 1995 thefts. Because Respondent alleges a history of persecution by the FARC spanning more than a decade, the period of his Liberal Party membership is essential to his claim and this discrepancy seriously damages his credibility.

The Court also notes that, if true, the letter is especially damaging to his claim because Respondent stated that he tried to get a U.S. visa in 1996 and was denied. If Respondent did become a party member in 1996, the Court cannot rule out the possibility Respondent joined the Liberal Party in order to substantiate a future asylum claim.

In addition to the inconsistency above, Respondent's testimony conflicted with his AO interview. Respondent testified that the FARC stole his equipment. However, based on notes from the asylum officer used in cross-examination, Respondent told the asylum officer that FARC said he could have his equipment back if he cooperated. Though Respondent denies the AO's account, there is no evidence in the record to lead this Court to believe that the AO's notes are incorrect or fabricated.

b. Respondent's testimony was not sufficiently detailed

Although Respondent claims he was targeted by FARC because of his Liberal Party membership, he has not provided detailed testimony to document his political opinion. When given an opportunity to explain his political opinion to the Court, he stated that he "spoke out against the communist tendencies of FARC." He stated that he joined his party because he supported democracy and freedom and opposed poverty. The Court finds that, without more, this general statement of a political opinion is inadequate to support his claim of persecution on account of his political opinion--especially considering the level of party involvement Respondent testified to. Considering Respondent's failure to provide detailed testimony in light of the serious discrepancy between when he testified he joined the liberal party and when the party claimed he joined, serious doubts are cast upon Respondent's credibility and the veracity of his claim.

c. Respondent omitted key events from his asylum application

The omission of key events in Respondent's asylum application further damages Respondent's credibility. In Respondent's asylum application, he stated his role with the Liberal Party was printing free flyers and that FARC persecuted him because he would not provide them with printing services. However, at his individual hearing, Respondent testified to extensive involvement with the Liberal Party including recruitment, speaking at meetings, and distributing party "propaganda." When asked why he did not provide this information in his asylum application, Respondent claimed that he could not fit everything in. This is not a sufficient explanation because 1) Respondent took roughly four months to complete his application, 2) he used an addendum; and 3) he claimed he had been thinking about seeking protection from the United States for many years. When questioned why he did not provide

this information during his AO interview, Respondent claims he did not have the opportunity. This explanation is not believable or sufficient. Information related to Respondent's Liberal Party involvement goes to the heart of his claim and its omission leads the Court to believe that Respondent has embellished his testimony- further damaging his credibility.

d. Respondent's account of his claim was inherently implausible

In addition to the serious inconsistencies and omissions discussed above, Respondent's account of his claim contained numerous implausibilities that call his refugee status into doubt. Respondent stated that after the 1990 shooting incident that caused his brother to flee Colombia he decided to remain in Colombia to operate the printing business. If Respondent were truly afraid for his life, it is not plausible that he would have stayed in Colombia for ten additional years.

Moreover, Respondent made three trips to the U.S. in 1988 and 1999-- after the alleged robberies and harassment by FARC. Each time, Respondent returned to Colombia. It is not plausible that someone who fears for their life would return to a country where they were facing persecution.

Finally, Respondent has provided no explanation of what triggered FARC to escalate from stealing equipment from Respondent's shop in 1995 to trying to kill Respondent in 2000. Without an explanation, this extreme escalation is implausible.

e. Respondent's corroborating evidence does not bolster his testimony

Respondent's corroborating evidence does not repair his credibility. The evidence relating to his Boy Scout involvement is not relevant to his claim and the Court does not doubt that he owned a printing business. As discussed supra, the letter from the Liberal Party official hurts his claim more than

it helps. The Court is sensitive to the fact that Respondent's son has suffered some sort of emotional trauma. However, the psychologist's report contains only general statements about conditions in Colombia that do not substantiate Respondent's claim of particularized persecution.

Finally, the Court notes the conspicuous absence of Respondent's brother from these proceedings. Though Respondent stated that he believed that providing his brother's alien number (not in the record) was enough to substantiate his claim, this is not a convincing explanation, especially considering Respondent was represented by counsel. Respondent's brother, the only available eyewitness to the alleged 1990 shooting, only filed a very general affidavit stating he and his brother experienced harassment by FARC. Even if the affidavit is taken at face value, it does not address the concerns of the Court relating to Respondent's level of involvement with the Liberal Party and other inconsistencies, omissions, and implausibilities.

Based on the foregoing, the Court finds that Respondent is not credible. He has not provided a consistent, detailed, and plausible account of his claim. As such, he has not met his burden to demonstrate eligibility for asylum. Asylum is denied.

B. Withholding of Removal

An application for asylum is also deemed to constitute an application for withholding of removal. See 8 C.F.R. § 1208.3(b) (2006). To be eligible for a mandatory grant of withholding of removal under the Act, Respondent must show it is more likely than not that his life or freedom would be threatened in Colombia because of race, religion, nationality, membership in a particular social group, or political opinion. INA § 241(b)(3)(A); see also 8 C.F.R. § 1208.16(b)(1). Respondent must establish that the government, or persons that the government cannot or will not control, have

persecuted or seek to persecute the applicant "*because of*" his race, political opinion, or other protected ground. Sanchez v. U.S. Att'y Gen., 392 F.3d 434, 438 (11th Cir. 2004). Additionally, Respondent must establish that he is unable or unwilling to avail himself of the protection of Colombia. INA § 101(a)(42)(A).

The burden of proof is on Respondent to demonstrate that he more likely than not would be persecuted or tortured upon his return to Colombia. See Sanchez v. U.S. Atty. Gen., supra at 437; 8 C.F.R. § 1208.16(b). Respondent's credible testimony may be sufficient to sustain the burden of proof without corroboration. 8 C.F.R. § 1208.16(b). Respondent cannot demonstrate that he would more-likely-than-not be persecuted on account of a protected ground if he could avoid a future threat by relocating to another part of Colombia. 8 C.F.R. § 1208.16(b)(3). However, if Respondent's past persecution was by the government, internal relocation will be presumed not to be reasonable. 8 C.F.R. § 1208.16(b)(3)(ii).

The Court finds that Respondent does not demonstrate that it is more likely than not that he will be persecuted on account of his political opinion because he has not met the lower burden of proof necessary to establish eligibility for asylum. Additionally, he has not provided a credible account of his claim to support a grant of withholding of removal. Withholding of removal is denied.

C. Withholding of Removal under the Convention Against Torture

To be eligible for withholding of removal under CAT, Respondent must show that it is "more likely than not" that he will be tortured if removed to Colombia. 8 C.F.R. § 1208.16(c)(2); see Najjar v. Ashcroft, 257 F.3d 1262, 1303 (11th Cir.2001). The burden of proof for withholding of removal

under CAT is higher than the burden for asylum. Id. However, Respondent is not required to demonstrate he would be tortured on account of a particular belief or immutable characteristic. See Matter of S-V-, 22 I&N Dec. 1306 (BIA 2000). Credible testimony may be sufficient to sustain the burden of proof without corroboration, 8 C.F.R. § 1208.16(c)(2), while incredible testimony may provide a sufficient basis for denial of CAT relief. Chen v. U.S. Dep't of Justice, 434 F.3d 144, 163 (2d Cir.2006).

Under CAT, torture "is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment that do not amount to torture." 8 C.F.R. § 1208.18(a)(2); see Cadet v. Bulger, 377 F.3d 1173 (11th Cir.2004) (Haitian policy of detaining criminal deportees for an indefinite period was not "torture" under CAT). For an act to constitute "torture," it must be: 1) an act causing severe physical or mental pain or suffering; 2) intentionally inflicted; 3) for a proscribed purpose; 4) by, at the instigation of, or with the consent or acquiescence of a public official who has custody or physical control of the victim; and 5) not arising from lawful sanctions. 8 C.F.R. § 1208.18(a); See Matter of J-E-, 23 I&N Dec. 291 (BIA 2002). Acquiescence requires a public official have prior awareness of torture and "thereafter breach his or her legal responsibility to intervene to prevent such activity." 8 C.F.R. § 1208.18(a)(7).

The Court must consider: evidence of past torture inflicted upon Respondent; evidence Respondent could relocate to a part of Colombia where he is not likely to be tortured; evidence of gross, flagrant, or mass violations of human rights within Colombia; and other relevant evidence regarding conditions in Colombia. 8 C.F.R. § 1208.16(c)(3). A pattern of human rights violations

alone is not sufficient to show Respondent is in danger of being tortured upon return to Colombia; specific grounds must indicate he will personally be at risk of torture. Matter of S-V-, supra at 1313.

The Court finds Respondent is ineligible for CAT protection because he has not presented evidence that the government of Colombia will torture him or acquiesce to his torture. Instead, he claims persecution from FARC, a non-governmental terrorist group that the official government of Colombia is opposed to.

Colombia is a multiparty democracy that provides security forces to protect citizens from guerrilla and paramilitary groups. Department of State Country Reports on Human Rights 2004 (administrative notice taken pursuant to 8 CFR § 1003.1(d)(3)(iv)). In 2004, the civilian-led Ministry of Defense "generally maintained effective control of the security forces." Id. In fact, the Colombian government's human rights record improved in 2004. In 2004, the government prosecuted and convicted some members of the security forces for human rights violations. In response to violence by paramilitary groups the government "established a permanent police presence in every urban center in the country." Id. Because the official government policy of Colombia favors human rights, and the government provides security forces to combat paramilitary groups, it is unlikely the government would instigate, consent to, or acquiesce to FARC torturing Respondent. As such, relief under CAT is denied.

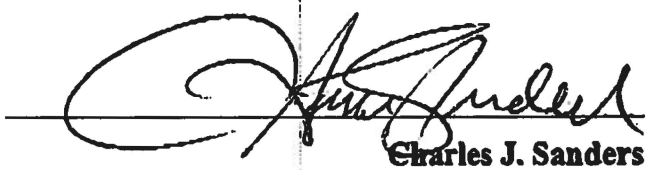
ORDER

IT IS HEREBY ORDERED that Respondent's application for Asylum under section 208 of the Immigration and Nationality Act be **DENIED.**

IT IS HEREBY ORDERED that Respondent's application for Withholding of Removal under section 241(b)(3) of the Immigration and Nationality Act be **DENIED.**

IT IS HEREBY FURTHER ORDERED that Respondent's application for Withholding of Removal under the Torture Convention, 8 C.F.R. § 208.16 be **DENIED.**

WHEREFORE IT IS FURTHER ORDERED that, as Respondent is subject to removal and there are no further issues to litigate, Respondent be removed from the United States to Colombia.



Charles J. Sanders
United States Immigration Judge

DATED this 28th day of March 2007.

CERTIFICATE OF SERVICE

This document was served by: MAIL (✓) PERSONAL SERVICE ( )

To: ( ) ALIEN ( ) ALIEN c/o Custodial Officer (✓) ALIEN's ATT/REO (✓) DHS ACC

Date: 3.28.07 By Court Staff _____

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

Files: (b) (6)

Date:

JAN 3 1 2007

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Pro se

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 (all respondents)

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

ORDER:

PER CURIAM. In a decision dated June 16, 2005, we summarily dismissed the respondents' appeal of a decision of an Immigration Judge denying their applications for asylum, withholding of removal, and protection under the Convention Against Torture. On (b) (6) the United States Court of Appeals for the (b) (6) entered a judgment remanding the case to this Board for a determination of whether the grounds given on the respondents' Notice of Appeal are adequate to apprise this Board of the basis for their appeal.

Our decision of June 16, 2005, is vacated. We are unable to reach a decision on the merits on account of omissions from the written transcript of the Immigration Judge's decision. Therefore, we are remanding this case to the Immigration Judge for a new decision. Upon remand, the Immigration Judge should also make a credibility finding that comports with the law of the (b) (6) (b) (6) *See, e.g., Yang v. U.S. Attorney General*, 418 F.3d 1198, 1201 (11th Cir. 2005). Accordingly, the record is remanded to the Immigration Judge for further proceedings.

FOR THE BOARD