IMMIGRATION COURT

(b) (6)

In the Matter of

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 2/2/10.
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[ ] Asylum was ( )granted ( )denied( )withdrawn.

[ ] Withholding of removal was ( )granted ( )denied ( )withdrawn.

[ ] A Waiver under Section _____ was ( )granted ( )denied ( )withdrawn.

[ ] Cancellation of removal under section 240A(a) was ( )granted ( )denied ( )withdrawn.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[ ] Cancellation under section 240A(b)(1) was ( ) granted ( ) denied ( ) withdrawn.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 appropriate 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[ ] Cancellation under section 240A(b) (2) was ( )granted ( )denied ( )withdrawn.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[✓] Adjustment of Status under Section 245 was (✓)granted ( )denied ( )withdrawn.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of removal ( ) deferral of removal under Article III of the Convention Against Torture was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's status was rescinded under section 246.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

ROBERT D. WEISEL
Immigration Judge

Appeal: Waived/Reserved Appeal Due By:

IMMIGRATION COURT

(b) (6)

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(b) (6)

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[ ] Asylum was ( )granted ( )denied( )withdrawn.

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[✓] Adjustment of Status under Section 245 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.

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[ ] 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:

ROBERT D. WEISEL
Immigration Judge

Appeal: (Waived) Reserved Appeal Due By:

IMMIGRATION COURT

In the Matter of

(b) (6)

Respondent

Case No.: (b) (6)

IN REMOVAL PROCEEDINGS

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[ ] Other: _____.

Date:

ROBERT D. WEISEL
Immigration Judge

Appeal: Waived/Reserved Appeal Due By:

File: (b) (6)

Date: AUG 2 0 2008

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Mary Elizabeth Delli-Pizzi, Esquire

ON BEHALF OF DHS: John Reh
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

This matter was last before the Board on December 12, 2003, when we denied the respondents' motion to reopen proceedings to present new evidence and to apply for protection under the Convention Against Torture. Prior to that, on March 26, 2003, we dismissed the respondents' appeal from the Immigration Judge's decision denying their applications for asylum and withholding of removal. The matter is currently before the Board pursuant to an order issued by the United States Court of Appeals for the (b) (6) *See* (b) (6) *v. Gonzales*, (b) (6) (b) (6) The (b) (6) remanded the record to the Board for "additional investigation or explanation" and directed the Board to consider whether "defected KGB agents" constitute a particular social group under the Immigration and Nationality Act, and if so whether the adult male respondent[1] has a well-founded fear of persecution on account of his status as a member of that group. The court also directed the Board to consider whether the respondent has a well-founded fear of persecution on account of a political opinion that may be imputed to him because of his defection. For the reasons explained below, the record will be remanded to the Immigration Judge.

After the (b) (6) issued its decision, the parties were given an opportunity to file briefs with the Board. The Department of Homeland Security ("DHS") filed a brief that argues "there is little or no evidence in the record to suggest that former agents or defectors have been subjected to public scrutiny or governmental persecution since the collapse of the former Soviet Union and the subsequent demise and elimination of the KGB" (DHS Br. at 8). The DHS also argues that the respondent has provided no evidence of other individuals who might belong to the group of defected KGB agents, and has not elaborated on what it means to be a defected KGB agent (DHS Br. at 9-10).

[1] Further references to "the respondent" in the singular will be to the adult male respondent (b) (6) (b) (6) The claims of his family members are derivative.

These issues were, in fact, addressed in the respondent's motion to reopen, which sought to have new evidence considered. Also, in his post-remand brief, the respondent relies heavily on the evidence submitted with his motion to reopen and on even more recent evidence. This evidence addresses changes that have taken place in Russia since the respondent's last hearing, which was held in 1999.

Given that the respondent has submitted substantial evidence, relevant to his applications, that has not been admitted to the record or considered by the Immigration Judge, we find it appropriate to remand the record for further proceedings. On remand, the parties will be permitted to offer additional evidence and argument with respect to the respondent's claims that he has a well-founded fear of persecution on account of membership in a particular social group, defected KGB agents, and on account of a political opinion that may be imputed to him because of his defection. The respondent shall also be given the opportunity to apply for protection under the Convention Against Torture. The Immigration Judge shall issue a new decision that includes findings on these claims and addresses the issues raised by the (b) (6)

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

FOR THE BOARD