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

CHARGES: Section 241(a)(1)(B) of the Immigration and Nationality Act of 1996

File No.: (b) (6))
)
)
In the Matter of)
)
(b) (6)) **IN DEPORTATION PROCEEDINGS**
)
Respondent.)

—present in violation of law;

Section 241(a)(1)(A) of the Immigration and Nationality Act of 1996
—excludable at time of entry or adjustment of status because of fraud or material, willful misrepresentation;

Section 241(a)(1)(C)(i) of the Immigration and Nationality Act of 1996
—nonimmigrant who failed to comply with conditions of status.

APPLICATIONS: Withholding of Deportation;
Deferral of Removal under the Convention Against Torture.

ON BEHALF OF RESPONDENTS:
Matt Adams, Esquire
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ON BEHALF OF THE GOVERNMENT:
Edward Lepkowitz, Assistant Chief Counsel
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DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. Procedural History

On July 12, 2007, the Board of Immigration Appeals remanded this case for further proceedings. See Decision of the Board (July 12, 2007). The Board noted that at the (b) (6) (b) (6) Respondent's appeals for asylum, withholding of removal under the Convention Against Torture, and adjustment of status were dismissed. Id. at 1; see also (b) (6) v. Gonzales, (b) (6) (b) (6) IJ Decision & Order (Oct. 2, 2002). However, the Board noted that Respondent may be eligible for withholding of deportation under former section 243(h)(1) of the Immigration and Nationality Act of 1996. Id. The Board also ordered this Court to grant

Respondent deferral of removal under the Convention Against Torture if it denies him withholding of deportation. Id. at 2.

The Court held additional hearings on September 21, 2007; April 30, 2008; September 10, 2008; and June 30, 2009. Respondent argued that he qualifies for withholding of deportation because he "does not present a danger to the national security of the United States." The government disagreed.

For the following reasons, Respondent's application for withholding of deportation will be denied. His request for deferral under the Convention Against Torture will be granted.

II. Summary of Facts

After the remand, both parties agreed that the Court should render a decision based on the evidence already in the record. The Court's summary and findings of fact in its October 2, 2002, decision—having been largely upheld by the Board and by the (b) (6) —are hereby incorporated in full in this decision.[1] See IJ Decision & Order (Oct. 2, 2002). However, the Court will re-state the most pertinent facts and some facts that arose after the Court's prior order.

Mujahidin e-Khalq ("MEK") and National Council of Resistance ("NCR") have been designated on the Department of State Foreign Terrorist Organization ("FTO") list since 1997 and 1999, respectively. See Designation of Foreign Terrorist Organizations, 62 Fed.Reg 52650 (October 8, 1997) (pertaining to MEK); Designation of Foreign Terrorist Organizations, 64 Fed.Reg 55112 (October 8, 1999) (pertaining to NCR). MEK and NCR were designated on the FTO list once again in 2002 and 2003, respectively. See Designation of Terrorist and Terrorist Organizations Pursuant to Executive Order 13224 of September 23, 2001, 67 Fed.Reg. 12633 (March 19, 2002) (pertaining to MEK); Determination Pursuant to Section 1(b) of Executive Order 13224 Relating to the Mujahedin-e Khalq (MEK), 68 Fed.Reg. 48984 (August 15, 2003) (pertaining to NCR).

In re-designating MEK as a terrorist organization in 2002, the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, stated that MEK has "been determined to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States." 67 Fed.Reg. 12633. Additionally, in re-designating NCR as a terrorist organization in 2003, the Secretary of State found that NCR was merely an alias for MEK, which means that it poses the same risk to the national security as MEK. See 68 Fed.Reg. 48984.

In an order dated October 2, 2002, this Court found that, based on Respondent's level of involvement in MEK, he was "engaged in terrorist activity" within the meaning of the Act. IJ

[1] With regard to one factual finding, the (b) (6) stated: "Other evidence that (b) (6) admitted to being a 'strong supporter' of MEK [...] is not borne out by the transcripts of the taped conversations on which that evidence was supposedly based. (b) (6) did indicate in one taped conversation, however, that he was a 'supporter' of MEK and 'not previously, but now I may have offered some help, too.'" (b) (6) The Court adopts this understanding of the evidence.

Decision & Order (Oct. 2, 2002) at 8. Specifically, the Court found that, after entering the United States, Respondent became involved with MEK and attended several demonstrations sponsored MEK, handed out newspapers published by MEK as a means of raising funds for MEK, and had a brother and sister who were members of that organization. Id. Respondent testified that he was presently a "supporter" of MEK and "not previously, but now I may have offered some help, too." (b) (6) 471 F.3d at 959. The Court also took into account the FBI confidential informant's ("CI") testimony, where he stated that he was certain that Respondent was aware at all times that MEK was responsible for killing several United States military personnel and civilians working on defense projects in Iran in the 1970's. IJ Decision & Order (Oct. 2, 2002) at 7. The Court noted the detailed recorded conversations between Respondent and the CI revealing that Respondent stayed at the MEK safe house in Los Angeles, attempted to recruit MEK members, performed simple tasks at MEK functions such as writing placards and arranging chairs for its programs, and participated in a fraudulent immigration scheme to secure visas for MEK members (b) (6) Id.

Additionally, on appeal the (b) (6) held that there is "substantial, uncontested evidence that [Respondent] committed immigration fraud" in his first two asylum applications, in which he used false names and alien numbers and made false claims of persecution. (b) (6) (b) (6) Respondent also admitted obtaining a fraudulent birth certificate in support of his immigration fraud. Id. Finally, the (b) (6) upheld the Board's finding that Respondent did not testify credibly. Id. at (b) (6)

III. Law & Analysis

A. Withholding of Deportation

To be eligible for withholding of deportation under former section 243(h)(1) of the Act, there must not, among other things, be "reasonable grounds for regarding the alien as a danger to the security of the United States." INA § 243(h)(2)(D) (1996). Previously, this Court determined that Respondent had engaged in terrorist activities. IJ Decision & Order (Oct. 2, 2002) at 8. However, it did not examine whether there was a link between his terrorist activities and the national security of the United States. Accordingly, the Board remanded these proceedings "for the sole purpose of allowing the Immigration Judge to render such a determination." Decision of the Board (July 12, 2007) at 2.

The "reasonable grounds" standard is satisfied if there is evidence that would permit a reasonable person to believe that the alien *is* a danger to United States security. Malkandi v. Holder, 576 F.3d 906, 914 (9th Cir. 2009) (interpreting the Attorney General's decision in Matter of A-H-, 23 I. & N. Dec. 744 (A.G. 2005) (emphasis added). This standard is "substantially less stringent than preponderance of the evidence." Id. at 913 (quoting Matter of A-H-, 23 I. & N. Dec. at 789). However, the statutory text of the Act requires that the alien "actually pose a danger" in the judgment of a reasonable person, which is a "more certain determination than that the alien 'might' or 'could' be a danger." Id. at 914. The (b) (6) and the Board have recognized that to be a danger to the security of the United States, the alien must act "in a way which 1) endangers the lives, property, or welfare of United States citizens; 2) compromises the

national defense of the United States; or 3) materially damages the foreign relations or economic interests of the United States." Id. at 911-912 (quoting Cheema v. Ashcroft, 383 F.3d 848, 857 (9th Cir. 2004). Furthermore, it is impermissible to find that an alien is a danger to United States security solely because he engaged in terrorist activity because such activity, if aimed at another country, does not necessarily involve danger to the United States. Cheema, 383 F.3d at 858-59; Hosseini, 471 F.3d at 958.

Thus, the present issue is whether a reasonable person would conclude from the evidence that Respondent is a danger to the security of the United States. After considering the evidence of record and the arguments of the parties, the Court concludes that a reasonable person would draw such a conclusion from Respondent's prior terrorist activities and his persistent immigration fraud.

Respondent is a supporter of MEK and NCR. From 1995 to 1998, he took affirmative steps to establish his support through fund-raising, recruiting, and other activities. Although Respondent argues that many of these activities occurred before either organization was officially designated a terrorist organization, the Board previously rejected this argument when determining whether Respondent was likely to engage in terrorist activities. See Decision of the Board (Sept. 24, 2003) at 4, n.7. Specifically, the Board noted that the issue was whether Respondent *is likely* to engage in terrorist activities, and there is no evidence to suggest that Respondent discontinued his affiliations with these groups once they were designated. Although the present inquiry is whether Respondent is currently a threat to the national security, Respondent's argument must be rejected for similar reasons, because a threat is *prospective* in nature, and there is no evidence that Respondent has discontinued his affiliation with the group.

In re-designating MEK as a terrorist organization in 2002, the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, stated that MEK has "been determined to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States." 67 Fed.Reg. 12633. The uncontested testimony of the confidential informant demonstrates that Respondent had knowledge of MEK's violent history, including the deaths of United States citizens abroad. Because Respondent was a member of and aided in fund-raising and recruitment for such an organization, a reasonable person would conclude that Respondent is similarly a danger to the security of the United States. Such activities implicate at least two of the proscribed activities identified in Cheema: they endanger the lives, property, or welfare of United States citizens and they materially damage the foreign relations or economic interests of the United States.

Furthermore, Respondent participated in (b) (6) scheme to fraudulently secure visas for MEK members and submitted at least two fraudulent asylum applications on his own behalf.[2] The evidence indicates that Respondent was involved in this scheme from 1996 to 1999, and MEK was officially designated as a terrorist organization in 1997. A reasonable person would conclude that Respondent's willingness to violate United States immigration laws in order to help members of an officially designated terrorist organization infiltrate the United

[2] Although Respondent argues that (b) (6) was responsible for submitting the fraudulent asylum applications on his behalf, the Board specifically found those assertions not credible, and the (b) (6) upheld that finding. (b) (6) Decision of the Board (Sept. 24, 2003) at 5.

States further demonstrates that he is a danger to the security of the United States. Immigration fraud on behalf of a designated terrorist organization implicates all three of the Cheema proscribed activities. It endangers the lives, property, or welfare of United States citizens and it compromises national defense because such fraud foils the efforts of the executive branch to identify and exclude dangerous individuals from the United States. Moreover, it materially damages the foreign relations or economic interests of the United States by improperly providing visas and—were Respondent's fraudulent asylum applications approved—work authorizations in the United States. The danger is "nontrivial", because the FBI and the legacy INS formed a joint task force called Operation Eastern Approach aimed at uncovering fraudulent immigration schemes designed to aid terrorist organizations, and Mr. Tabatabai's operation was significant enough to catch the attention of this task force. See Matter of A-H-, 23 I. & N. Dec. at 789 (discussing the "nontrivial" danger standard).

In short, the evidence demonstrates more than mere membership in a terrorist organization. It demonstrates that Respondent took an active and knowing role in recruiting members to and raising money for an organization that has "been determined to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States." Additionally, Respondent participated unlawfully attempted to foil the immigration laws of the United States in support of the organization. A reasonable person would conclude from this that Respondent is a danger to the security of United States.

Accordingly, Respondent is statutorily ineligible for withholding of deportation under former section 243(h)(2)(D) of the Act. His application will therefore be denied.

B. Deferral of Removal under the Convention Against Torture

Both the (b) (6) and the Board ordered that if Respondent were determined to be ineligible for withholding under section 243(h)(1), the Court must grant him deferral of removal under the Convention Against Torture. See (b) (6) ; Decision of the Board (July 12, 2007) at 2.

The government seeks to relitigate the issue of whether Respondent qualifies for deferral of removal. See Government's Brief (March 18, 2008), pp. 32-36. The government believes that it can prove changed country conditions based on the 2006 and 2007 U.S. Department of State Country Reports on Iran, which reflect that, though Iran's human rights record has worsened, and MEK members are still imprisoned, certain rank and file members of MEK living outside the United States have been granted amnesty. While the country reports reflect some positive change regarding the treatment of MEK members in Iran, it is doubtful that conditions have changed so much that the Court should disregard the express directions of the (b) (6) and the Board. The Court notes that the government's new evidence does not contradict the Ninth Circuit's conclusion that Respondent will be recognized by Iranian authorities because of his involvement with MEK and that dire—in fact, potentially torturous—consequences are likely to follow. (b) (6)

Accordingly, the following orders will issue:

ORDERS

IT IS HEREBY ORDERED that Respondent's application for withholding of deportation under former section 243(h)(1) is **DENIED**.

IT IS FURTHER ORDERED that Respondent be deported to **IRAN** on the charges contained in the Order to Show Cause.

IT IS FURTHER ORDERED that Respondent's request for deferral of removal to **IRAN** under the Convention Against Torture is **GRANTED.**

NOTICE TO RESPONDENT: Removal to Iran shall be deferred until such time as the deferral is terminated under 8 C.F.R. § 1208.17. Deferral of removal does not confer any lawful or permanent immigration status in the United States, will not necessarily result in being released from the custody of the government if the alien is subject to such custody, is effective only until terminated, and is subject to review and termination if the immigration judge determines that it is not likely that the alien would be tortured in the country to which removal has been deferred, or if the alien requests that deferral be terminated. See 8 C.F.R. § 1208.17(b)(1).

NOTICE TO RESPONDENT: Removal has been deferred only to Iran. Respondent may be removed at any time to another country where he is not likely to be tortured. See 8 C.F.R. § 1208.17(b)(2).

DATE: December 20, 2010

Richard D. Walton
FEDERAL
IMMIGRATION JUDGE

File: (b) (6) Date: JUL - 3 2007

In re: (b) (6)

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Matt Adams, Esquire

ON BEHALF OF DHS: Edward Lepkowitz
Assistant Chief Counsel

CHARGE:

Order: Sec. 241(a)(1)(B), I&N Act [8 U.S.C. § 1251(a)(1)(B)] -
In the United States in violation of law

Lodged: Sec. 241(a)(1)(A), I&N Act [8 U.S.C. § 1251(a)(1)(A)] -
Excludable at time of entry or adjustment of status under
section 212(a)(6)(C)(I), I&N Act [8 U.S.C. § 1182(a)(6)(C)(I)] -
Fraud or willful misrepresentation of a material fact

Sec. 241(a)(1)(C)(I), I&N Act [8 U.S.C. § 1251(a)(1)(C)(I)] -
Nonimmigrant - failed to comply with conditions of status

APPLICATION: Asylum; withholding of deportation; protection under the Convention Against Torture; *adjustment of status*

This case was last before us on May 6, 2004, when we denied the respondent's motion to reconsider our September 24, 2003, decision affirming the Immigration Judge's denial of all relief. In a decision dated (b) (6) the United States Court of Appeals for the (b) (6) granted review of the respondent's petition with regard to withholding of removal under section 243(h)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1253(h)(1), and deferral of removal under the Convention Against Torture only; the respondent's appeal of all other forms of relief; asylum, withholding of removal under the Convention, and adjustment of status, were dismissed. (b) (6) (b) (6) The court vacated our decision denying the respondent's application for deferral of removal under the Convention Against Torture and remanded for a grant of such relief. However, it also left open the possibility of withholding of removal under section 243(h)(1) of the Act because we did not apply the correct standard in assessing the respondent's eligibility for such relief.

(b) (6)

Pursuant to *Cheema v. Ashcroft*, 383 F.3d 848 (9th Cir. 2004), the (b) (6) vacated our decision finding the respondent statutorily ineligible for withholding of removal as one engaged in terrorist activities giving rise to reasonable grounds for regarding him as a danger to the security to the United States. In *Cheema, supra,* the court held that "it is impermissible to find that an alien is a danger to the security of the United States solely because he engaged in terrorist activity." (b) (6) *v. Gonzales, supra,* at (b) (6) This is because terrorist activity which is directed at another country does not necessarily involve danger to the security of the United States. *Id.*; *see also Cheema v. Ashcroft, supra*, at 858-59 (citing examples of terrorist activities which would not give rise to national security concerns for the United States).

In order to find an alien ineligible for withholding of removal, a finding must be made linking the terrorist activity with a criteria relating to our national security. (b) (6) *v. Gonzales, supra*, at (b) (6) Specifically, an alien poses a danger to the security of the United States where the alien acts "'in a way which 1) endangers the lives, property, or welfare of United States citizens; 2) compromises the national defense of the United States; or 3) materially damages the foreign relations or economic interests of the United States.'" *Cheema v. Ashcroft, supra*, at 856-57. As noted by the (b) (6) in *Cheema, supra,* this determination is a factual one, and the evidence to support the conclusion that an alien is a danger to our security based on one of the three criteria noted will most likely lie with the Department of Homeland Security. *Id.* at 858-59. While we and the Immigration Judge previously determined that the respondent was engaged in terrorist activities, we did not focus on whether there was a link between his activities and our national security. Accordingly, we will remand for the sole purpose of allowing the Immigration Judge to render such a determination, and to allow the parties to present further evidence on this issue if deemed necessary. *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). Assuming a link between the respondent's activities with the Mujahedin-e Khalq (MEK) and a threat to our national security is found, the Immigration Judge shall enter an order granting the respondent deferral of removal.

ORDER: The record of proceedings is remanded for further proceedings consistent with this order.

Patricia A. Cooke
FOR THE BOARD