U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
(b) (6)

In the Matter of:
(b) (6)

Date: July 31, 2012

Case No.: (b) (6)

RESPONDENT IN REMOVAL PROCEEDINGS

DECISION

Jurisdiction was established in this matter by the filing of the Notice to Appear issued by the Department of Homeland Security, with the Executive Office for Immigration Review and by service upon the respondent. See 8 C.F.R. § 1003.14(a), 103.5a.

The respondent was provided written notification of the time, date and location of the respondent's removal hearing. The respondent was also provided a written warning that failure to attend this hearing, for other than exceptional circumstances, would result in the issuance of an order of removal in the respondent's absence provided that removability was established. Despite the written notification provided, the respondent failed to appear at his/her hearing, and no exceptional circumstances were shown for his/her failure to appear. This hearing was, therefore, conducted in absentia pursuant to section 240(b)(5)(A) of the Immigration and Nationality Act.

[X] At a prior hearing the respondent admitted the factual allegations in the Notice to Appear and conceded removability. I find removability established as charged.

[ ] The Department of Homeland Security submitted documentary evidence relating to the respondent which established the truth of the factual allegations contained in the Notice to Appear. I find removability established as charged.

I further find that the respondent's failure to appear and proceed with any applications for relief from removal constitutes an abandonment of any *pending applications and any applications the respondent may have been* eligible to file. Those applications are deemed abandoned and denied for lack of prosecution. See Matter of Pearson, 13 I&N Dec. 152 (BIA 1969); Matter of Perez, 19 I&N Dec. 433 (BIA 1987); Matter of R-R, 20 I&N Dec. 547 (BIA 1992).

ORDER: The respondent shall be removed to **MEXICO** or in the alternative to ——— on the charge(s) contained in the Notice to Appear.

Laura L. Ramirez
Immigration Judge
Date: July 31, 2012

cc: Assistant District Counsel
Attorney for Respondent/Respondent

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File: (b) (6) Date: MAY 0 3 2007

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: James F. Smith, Esquire

ON BEHALF OF DHS: Cara O. Knapp
Assistant District Counsel

APPLICATION: Cancellation of removal

ORDER:

PER CURIAM. This case is presently before us pursuant to the (b) (6) decision of the United States Court of Appeals for the (b) (6) *(rehearing en banc denied* (b) (6) . The court found that the respondent's state conviction for simple battery is not an aggravated felony under the immigration laws and that the respondent is therefore not statutorily ineligible for cancellation of removal. Pursuant to the (b) (6) decision, the respondent should be given the opportunity to apply for cancellation of removal. Accordingly, the decision of the Board dated November 25, 2003, is vacated and the record is remanded to the Immigration Judge for further proceedings.

FOR THE BOARD