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

In the Matter of:

(b) (6)

(Respondent)

Case No.: (b) (6)
Docket: (b) (6)
Date: June 14, 2006

IN REMOVAL PROCEEDINGS

## ORDER OF THE IMMIGRATION JUDGE

Remand

This is a summary of the oral decision 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.

[ ] Respondent was ordered removed from the United States 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 of a bond in the amount of $ _____ within 5 business days and with an alternate order of removal to _____. Respondent advised of limitations on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

[ ] Respondent's application for cancellation of removal under section 240A (a) was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's application for cancellation of removal under section 240A (b) was ( ) granted ( ) denied ( ) withdrawn ( ) reserved.

[ ] Respondent's application for a waiver under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's application for adjustment of status under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent is admitted to the United States as a _____ until _____.

[✓] Respondent's application for asylum was (✓ granted) ( ) denied ( ) withdrawn. If asylum granted, see Bulletin Board for Benefits and Responsibilities. c PC

[✓] Respondent's application for section 241 withholding of removal was ( ) granted (✓ denied) ( ) withdrawn.

[ ] Withholding of Removal/Deferral of Removal under UN Torture Convention was ( ) granted ( ) denied ( ) withdrawn.

[✓] Your application is granted; you must contact DHS for issuance of new documents.

[ ] Proceedings were terminated.

[ ] _____.

Dayna Beamer
DAYNA BEAMER
Immigration Judge

Appeal: Reserved / (Waived) (Alien /DHS/(Both))
Appeal to BIA due:
_____ Appeal packet provided
HK Post Order Instructions provided

File: (b) (6) Date: MAY 19 2006

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Benjamin V. Chen, Esquire

ON BEHALF OF DHS: June Y.I. Ito
Assistant District Counsel

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] - Present without being admitted or paroled

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

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) The court found that substantial evidence did not support the Immigration Judge's adverse credibility finding. It remanded the case for the Board to address the Immigration Judge's alternative finding that, even if eligible for asylum, the respondent's application for relief should be denied in the exercise of discretion.

Given the unusually harsh consequences that may befall an alien who has established a well-founded fear of persecution, we generally will not deny an asylum application in the exercise of discretion except where egregious adverse factors are present. *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996); *Matter of Pula*, 19 I&N Dec. 467 (BIA 1987). The Immigration Judge in the present case found the respondent not deserving of asylum because he and his wife relinquished their second daughter for adoption, knowing that it was not allowed to have a third child in China, and wishing to have a son. The Immigration Judge discussed at some length what can happen to unwanted girls in China, and found it "unconscionable" that the respondent would give up his daughter given what might possibly happen to her.

We acknowledge the Immigration Judge's concerns regarding the general issue of unwanted female children in China and this respondent's treatment of his second daughter. However, we also acknowledge the respondent's testimony, that he and his wife arranged through a midwife to have his daughter adopted, and that when they later inquired what had happened to her, they learned that she had been adopted by a family that was providing well for her. In light of the court's rejection of the Immigration Judge's adverse credibility finding, and the respondent's testimony on this issue, as well as the case law cited above regarding discretionary denials of asylum, we do not find that the respondent's relinquishment of his daughter for adoption is so egregious an adverse factor that asylum should be denied as a matter of discretion.

As the forced sterilization of the respondent's wife qualifies the respondent as a refugee, he is eligible for asylum, and also eligible for withholding of removal from China. *See Matter of Y-T-L-*, 23 I&N Dec. 601, 607 (BIA 2003); *see also Matter of C-Y-Z-*, 21 I&N Dec. 915 (BIA 1997); *Matter of X-P-T-*, 21 I&N Dec. 634 (BIA 1996). The record is therefore remanded to the Immigration Judge solely for the required security checks. Given today's decision, any request for protection under the Convention Against Torture is moot. *See generally Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987).

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the records are remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h). *See* Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals, 70 Fed. Reg. 4743, 4752-54 (Jan. 31, 2005).

FOR THE BOARD