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

In the Matter of:

(b) (6)

In removal proceedings

File No.: (b) (6)

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the Unopposed Motion to Administratively Close Proceedings, the Court states the following:

1. The parties have agreed to administrative closure of the instant proceedings.

2. Other: _____.

THEREFORE, it is HEREBY ORDERED that the motion be:

[✓] **GRANTED.** These proceedings are hereby administratively closed upon the joint consent of the parties. Proceedings may be recalendared at any time upon either party's motion, and this order does not constitute a final judgment rendered on the merits of these proceedings. The respondent(s) must timely notify the Immigration Court of each change of address and new address in accordance with section 265 of the Immigration and Nationality Act and 8 C.F.R. § 1003.15(d)(2).

[ ] **DENIED.** _____

_____

_____

Javier Balasquide

Javier Balasquide
Immigration Judge

Date: 5/15/2014

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File: (b) (6) Date: APR 24 2009

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Harry A. DeMell, Esquire

CHARGE:

Notice: Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] - Immigrant - no valid immigrant visa or entry document

APPLICATION: Termination of proceedings

This case was last before the Board on June 5, 2007, when we denied as untimely the respondent's motion to reopen. Previously, on September 22, 2006, the Board dismissed the respondent's appeal of the Immigration Judge's May 9, 2005, decision finding her removable as charged. This case is now before us pursuant to the order issued by the United States Court of Appeals for the (b) (6), in whose jurisdiction it arises, vacating the Board's prior decision. The record will be remanded to the Immigration Judge for further proceedings consistent with this opinion and for entry of a new decision.

In his May 9, 2005, decision finding the respondent had abandoned her lawful permanent resident status, the Immigration Judge concluded that because the respondent had been out of the United States for a period exceeding a year, the burden of proof shifted from the Department of Homeland Security ("DHS") back to the respondent to demonstrate that she had not abandoned her lawful permanent resident status (I.J. at 3). The Immigration Judge went on to conclude that the respondent failed to meet her burden of proof (I.J. at 8). On September 22, 2006, the Board affirmed the Immigration Judge's decision and dismissed the respondent's appeal. On January 11, 2007, the respondent filed an untimely motion to reopen which was denied by the Board on June 5, 2007.

On (b) (6) the (b) (6) issued its decision finding that both the Immigration Judge and the Board erred in shifting the burden of proof to the respondent to show that she did not abandon her permanent resident status because she had been outside of the United States in excess of a year. *See* (b) (6) *v. Mukasey*, (b) (6) The (b) (6) found no support for the Immigration Judge's decision shifting the burden of proof to the respondent due to the length of her absence from the United States and concluded that once an alien shows a colorable claim to lawful permanent resident status, the DHS has the burden to prove abandonment by clear, unequivocal, and convincing evidence. *See id.* at 91 (citing *Matter of Huang*, 19 I&N Dec. 749 (BIA 1988), *Hana v. Gonzales*, 400 F.3d 472, 476 (6th Cir.2005), and *Khodagholian v. Ashcroft*, 335 F.3d

1003, 1006 (9th Cir.2003)). As a result, the (b) (6) vacated the Board's decision affirming the Immigration Judge and remanded the record for further fact-finding on the issue of whether the DHS met its burden of proof in establishing that the respondent abandoned her lawful permanent resident status. Inasmuch as the Board does not engage in fact-finding, we find it necessary to remand the record to the Immigration Judge for further proceedings consistent with the order of the (b) (6) and for entry of a new decision.

Accordingly, the record will be remanded to the Immigration Judge for further proceedings consistent with this opinion and for entry of a new decision.

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

FOR THE BOARD