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

File: (b) (6)

In the Matter of:

(b) (6)

Respondent

IN REMOVAL PROCEEDINGS

APPLICATIONS: Asylum, Withholding of Removal, and Protection under the Convention against Torture

ON BEHALF OF RESPONDENT:
Gihan Thomas, Esq.

ON BEHALF OF THE DEPARTMENT OF HOMELAND SECURITY:
Ms. Hempel
Assistant Chief Counsel

WRITTEN DECISION AND ORDER OF THE IMMIGRATION JUDGE

On February 10, 2012, the Board of Immigration Appeals remanded these proceedings in light of intervening (b) (6) decision reversing the prior IJ and the BIA decisions denying the respondent's applications for relief. The case was randomly reassigned to the undersigned IJ as the prior IJ is not longer assigned to this Court.

The undersigned has familiarized herself with the record of proceedings. In addition, the parties were provided with an additional opportunity to supplement the record. The respondent has filed additional documents marked as exhibits R1 and R2, which were admitted into the record without any objections. The respondent also testified regarding her continued fear of return to Indonesia.

A. Asylum

The (b) (6) decision found that the respondent's untimely filed application for asylum should be excused under the law. The case was remanded for reconsideration of her claim on its merits.

In its decision, the (b) (6) also noted the following:

(b) (6) is an Indonesian citizen of Chinese descent. (b) (6) testified that when she lived in Indonesia, she was harassed, robbed, attacked, and sexually assaulted on account of her Chinese ethnicity. On one occasion, (b) (6) was the only Chinese–Indonesian person riding on a bus. Four Indonesian men on the bus targeted only her, dragged her off the bus at knife-point, robbed her, attempted to rape her, and cut her with the knife as she struggled to escape. On another occasion, she was again targeted by Indonesian men while riding public transportation. The men attacked and attempted to rob (b) (6) According to (b) (6) in both instances she was the only Chinese person around and the Indonesian men singled her out due to her Chinese ethnicity. (b) (6) testified that she did not report the two incidents to the police because the police were hostile to ethnic Chinese–Indonesians. Following these incidents, (b) (6) became depressed, feared leaving her home, and had to be escorted to and from her office by her father.found that the facts include two incidents in which the respondent was harmed.

After considering the totality of the evidence, the Court finds that the respondent is eligible for asylum. The case is governed by the pre-REAL ID Act. Thus, so long as the petitioner shows that her attackers "[were] motivated, at least in part, by a[ ] . . . protected ground," that is sufficient to establish that the action was "on account of" a protected ground within the meaning of 8 U.S.C. § 1101(a)(42)(A). *Borja v. INS*, 175 F.3d 732, 736 (9th Cir. 1999) (en banc). In addition, as a female Chinese individual from Indoensia, the respondent is considered a member of a "disfavored group." *Sael v. Ashcroft*, 386 F.3d 922, 927 (9th Cir. 2004). As such, the facts of this case are not sufficiently distinguishable for the applicant in *Sael* where the (b) (6) found that the incidents of harm by unrelated individuals amounted to past persecution on account of a protected ground.

As the respondent has shown past persecution, she benefits from a rebuttable presumption of future persecution. 8 C.F.R. § 1208.13(b)(1). The government has not filed any additional evidence in the case. The respondent has. Exhibits R1 and R2. The respondent argues that she can not return to Indonesia even though it has been over a decade since these two incidents and there is no claim that anyone is interested in harming her in particular. Rather she argues that she is a single woman who is no family there and would remain a vulnerable target for the "natives," and that the government of Indonesia has not changed sufficiently to ensure her protection against these "natives" of her country. Under the current (b) (6) jurisprudence and under the particular circumstances and history of this case, the Court feels compelled to find the respondent eligible for asylum.

Accordingly, the following order shall be entered.

ORDERS

IT IS HEREBY ORDERED that Respondent's application for asylum be GRANTED.

Appeal rights are reserved on behalf of both parties. Any party wishing to appeal the Court's decision must ensure that the appeal documents are properly completed and received by the Board of Immigration Appeals no later than 30 days from the service date of this decision.

DATE: 2/12/2014

A. ASHLEY TABADDOR
United States Immigration Judge

File: (b) (6) Date:

In re: (b) (6) FEB 10 2012

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Gihan L. Thomas, Esquire

ON BEHALF OF DHS: Ingrid Abrash
Senior Attorney

APPLICATION: Asylum; withholding of removal

This case is before the Board pursuant to a (b) (6) decision and order of the United States Court of Appeals for the (b) (6) Subsequently, post-remand filings were received from both the respondent and the Department of Homeland Security (DHS). We find that a remand is warranted for a disfavored group analysis and for further fact-finding to address the issues remanded by the (b) (6) regarding whether extraordinary circumstances excuse the untimely filing of the respondent's asylum application. Therefore, the record will be remanded for further proceedings not inconsistent with the (b) (6) order. Accordingly, the following order will be entered:

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

Molly Randall Clark
FOR THE BOARD