IMMIGRATION COURT

(b) (6)

In the Matter of

(b) (6)

Respondent

Case No.: (b) (6)

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Nov 29, 2006. This memorandum is 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.

[ ] The respondent was ordered removed from the United States to or in the alternative 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 a bond in the amount of $ _____ with an alternate order of removal to

Respondent's application for:

[✓] Asylum was ( ) granted (✓) denied ( ) withdrawn

[✓] Withholding of removal was ( )granted (✓) denied ( ) withdrawn

[ ] A Waiver under Section _____ was ( ) granted ( ) denied ( ) withdrawn

[ ] Cancellation under Section 240A(a) was ( )granted ( )denied ( )withdrawn

Respondent's application for:

[ ] Cancellation under Section 240A(b)(1) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Cancellation under Section 240A(b)(2) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Adjustment of Status under Section _____ was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Respondent's application of ( ) witholding of removal ( ) deferral of removal under Article III of the Convention Against Torture was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's status was rescinded under section 246.

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

[ ] As a condition of admission, respondent is to post a $ _____ bond.

[ ] Respondent knowingly filed a frivolous asylum application after proper notice.

[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

[ ] Proceedings were terminated.

[✓] Other: Granted Relief under Convention Against Torture.

Date: Nov 29, 2006

ANTHONY T. GIATTINA
Immigration Judge

Appeal: Waived/Reserved Appeal Due By:

4MS

File: (b) (6)

Date:

In re: (b) (6)

FEB 25 2005

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Estell M. McKee, Cornell Law School

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 was previously before the Board on April 22, 2003, when we summarily affirmed, without opinion, the results of the Immigration Judge's decision denying the respondent's applications for asylum and withholding of removal, and his request for protection under the Convention Against Torture (CAT). The matter is now before us pursuant to the (b) (6) decision of the United States Court of Appeals for the (b) (6)

This case involves a 42-year-old native and citizen of El Salvador, who is homosexual. He credibly testified that when he was 13, he was picked up, taken to a remote location, and gang-raped by a number of men. He further testified that he did not report this incident to the police because the men threatened to harm him further if he told anyone. The respondent came to the United States when he was 17 and has never returned to El Salvador.

The Immigration Judge found the respondent credible regarding his rape. However, he denied relief because the people who harmed the respondent were common criminals, and the respondent never told anyone what had happened to him.

The court found it had no jurisdiction to review the Immigration Judge's finding that the respondent's asylum application was barred because it was not filed within 1 year of his entry into the United States. However, it remanded on the issues of withholding of removal and the CAT claim. The court found that the Immigration Judge did not apply the correct legal standards in assessing these claims by the respondent.

With regard to the CAT claim, the court noted that torture need only be with the government's "consent or acquiescence," which the (b) (6) has held can be "willful blindness" by government officials to torture committed by non-government individuals or groups. *See Zheng v. Ashcroft*, 332 F.3d 1186 (9th Cir. 2003). Citing to *Hernandez-Montiel v. INS*, 225 F.3d 1084 (9th Cir 2000), which, like this case, involved an alien who claimed he was persecuted for being gay, the court noted that an applicant for withholding must show that the government is unable or unwilling to control those who persecute the alien. The court remanded the case for further consideration, with the application of the proper legal standards to the respondent's withholding and CAT claims.

In light of the court's decision, we find that a remand is necessary in this case. The respondent represented himself at his removal hearing and the testimony regarding what happened to him in El Salvador, and the reasons why he did not go to the authorities, were not discussed in much detail (Tr. at 60-63). Further, the respondent, who is now represented, has submitted additional evidence which relates to the treatment of homosexuals in Latin American countries. A remand will allow the respondent to present this evidence, and any further testimony he may desire to give regarding his case. The government will have the opportunity to present its evidence and arguments on the issue of what role the Salvadoran government might play in the treatment of homosexuals in that country.

Accordingly, the decision of the Board in this case dated April 22, 2003, is vacated, and the record is remanded to the Immigration Judge for further proceedings consistent with this decision and the decision of the court.

FOR THE BOARD