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 Jan. 11, 2011. 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[✓] Asylum was (✓)granted ( )denied( )withdrawn.

[✓] Withholding of removal was (✓)granted ( )denied ( )withdrawn.

[ ] A Waiver under Section _____ was ( )granted ( )denied ( )withdrawn.

[ ] Cancellation of removal under section 240A(a) was ( )granted ( )denied ( )withdrawn.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[ ] Cancellation under section 240A(b)(1) was ( ) granted ( ) denied ( ) withdrawn.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 appropriate 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[ ] Cancellation under section 240A(b) (2) was ( )granted ( )denied ( )withdrawn.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[ ] Adjustment of Status under Section ____ was ( )granted ( )denied ( )withdrawn.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 ( ) withholding of removal ( ) deferral of removal under Article III of the Convention Against Torture was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's status was rescinded under section 246.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

Date: Jan 11, 2011

Michael H. Bennett

MICHAEL H. BENNETT
Immigration Judge

Appeal: Waived/Reserved by both Appeal Due By:

File: (b) (6)

Date: AUG 20 2008

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Philip Smith, Esquire

APPLICATION: Asylum

ORDER:

PER CURIAM. This record is before us on remand from the United States Court of Appeals for the (b) (6) The court, in a published decision, determined that the Immigration Judge erred in his analysis of the respondent's eligibility for asylum under section 208 of the Act, 8 U.S.C. § 1158. (b) (6) *v. Mukasey*, (b) (6) Specifically, the court found that the Immigration Judge erred in holding that the respondent's untimely filing of his asylum application was not excused under the changed circumstances exception "solely because his subjective intent to apply for asylum – and subjective fear – existed before the expiration of the one-year application period." *Id.* at (b) (6) The court also determined that the Immigration Judge's alternative denial of the application on its merits was in error because he improperly placed the burden on the respondent "to disprove the reasonableness of internal relocation" in Senegal. *Id.* at 1065.

The court remanded the record for a determination of whether the respondent demonstrated changed circumstances and, if so, whether he applied for asylum within a reasonable period. In addition, the court remanded for proper consideration of the placement of the burden for internal relocation.[1] In light of the court's decision, we find that the record should be remanded to the Immigration Court for additional fact-finding and for further consideration of the respondent's asylum application. *See* 8 C.F.R. § 1003.1(d)(3)(iv) (stating that the Board may not engage in fact-finding in the course of deciding appeals except for taking administrative notice of commonly known facts).

Accordingly, our June 30, 2004, order in which we dismissed the respondent appeal is hereby vacated insofar as it is inconsistent with the court's decision.

[1] The court upheld the Immigration Judge's decision to deny the application for withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3), as well as our November 4, 2004, decision to deny the respondent's motion to reopen.

(b) (6)

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings not inconsistent with this decision or that of the circuit court.

FOR THE BOARD