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

In the Matter of: (b) (6) **A Number:** (b) (6)

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the Respondent's **MOTION TO ADMINISTRATIVELY CLOSE PROCEEDINGS,** it is HEREBY ORDERED that the motion be ✓ **GRANTED** _____ **DENIED** because:

_____ DHS does not oppose the motion.
_____ The respondent does not oppose the motion.
✓ A response to the motion has not been filed with the court.
_____ Good cause has been established for the motion.
_____ The court agrees with the reasons stated in the opposition to the motion.
_____ The motion is untimely per _____.
_____ Other:

Deadlines:

_____ The application(s) for relief must be filed by _____.
_____ The respondent must comply with DHS biometrics instructions by _____.

8/18/14
Date

Hon. Hayward
Immigration Judge

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U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6)

Date: MAR 27 2013

In re: (b) (6)

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Robert B. Jobe, Esquire

ON BEHALF OF DHS: Joseph Y. Park
Senior Attorney

APPLICATION: Remand

ORDER:

This case is before us pursuant to a decision by the United States Court of Appeals for the (b) (6) dated (b) (6) *v. Holder*, (b) (6) The (b) (6) concluded that the Immigration Judge did not adequately protect the respondent's privilege of being represented by an attorney, as afforded under 8 U.S.C. § 1362. *Id.* at (b) (6) The (b) (6) also found that the respondent was not required to demonstrate that a violation of 8 U.S.C. § 1392 caused him prejudice. *Id.*

In light of th (b) (6) decision, the record is remanded for a new hearing at which the respondent's removability and eligibility for relief should be considered de novo. On remand, the respondent should be provided the opportunity to be represented at no expense to the Government in accordance with the statute and the regulations. 8 U.S.C. § 1362; 8 C.F.R. §§ 1003.16 and 1292.1. If the respondent is found to be removable, he may apply for any relief for which he may qualify. He retains the burden of demonstrating his eligibility for the relief sought. 8 C.F.R § 1240.8(d).

FURTHER ORDER: The record is remanded for further proceedings not inconsistent with the foregoing opinion and entry of a new decision.

FOR THE BOARD

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6)

Date: JUL 18 2008

In re: (b) (6)

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Coppin, Sarah, Esquire

ON BEHALF OF DHS: Joseph Y. Park, Senior Attorney

ORDER:

PER CURIAM. The respondent moves the Board pursuant to 8 C.F.R. § 1003.2 to reconsider our decision dated January 11, 2008. A motion to reconsider requests that the original decision be re-examined in light of additional legal arguments, a change of law, or an argument or aspect of the case that was overlooked. See Matter of Cerna, 20 I&N Dec. 399 (BIA 1991); see also 8 C.F.R. § 1003.2(b) (2007). Upon review of the motion to reconsider, we find no new legal argument, no change of law, or particular aspect of the case which was overlooked and no other ground upon which to reconsider our previous decision. See Hernandez-Gil v. Gonzales, 476 F.3d (9th Cir. 2007). Accordingly, the motion is denied.

FOR THE BOARD

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6)

Date: JAN 11 2008

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Robert B. Jobe, Esquire

APPLICATION: Remand

ORDER:

PER CURIAM. On May 17, 2007, the United States Court of Appeals for the (b) (6) remanded this case to the Board for a decision concerning the respondent's claim that his right to counsel was violated before the Immigration Judge. Upon remand, we find that the respondent's right to counsel was not violated. Thus, the respondent's appeal is dismissed.

Initially, we note that the Immigration Judge granted the respondent continuances in order to give him the opportunity to obtain counsel between December 10, 2002, and May 12, 2004. On May 12, 2004, the respondent came to court with a letter, dated May 1, 2004, indicating that the respondent's counsel of record (at that time) had been suspended until August of 2004. *See* Tr. at 19-24. The Immigration Judge then attempted to discern when the respondent discovered such fact, and whether the respondent had any opportunity, after such discovery, to seek and obtain other counsel. The respondent testified that he last spoke with his attorney the week prior to the May 12, 2004, hearing. *Id.* He further testified that he had spoken with his attorney by phone after receiving the letter about his attorney being suspended. *Id.* Yet, the respondent alternately testified that he only received the letter the day before the May 12, 2004, hearing. *Id.* Thus, the respondent's testimony did not add up. The Immigration Judge pointed this out, and the respondent admitted that he had lied to the Court about the timing of these events. *See* Tr. at 22.

Hence, under these circumstances, as the respondent lied and did not give candid information about the amount of time that he had been aware of his need to obtain new counsel, we cannot find that there is sufficiently reliable information in the record that his right to seek and have the opportunity to obtain counsel was violated. We do not find that the respondent's false testimony sufficiently established good cause for a continuance. Hence, we find that there is insufficient evidence that the Immigration Judge erred or abused his discretion in failing to offer the respondent a continuance or further time to obtain counsel at that point in the merits hearing. *See* 8 C.F.R. § 1240.6.

Furthermore, and in the alternative, even if it was determined that the respondent was not given sufficient opportunity to obtain counsel, or if he did not effectively waive his right to obtain counsel, it would not automatically follow that he had been denied due process. *See Matter of Santos*, 19 I&N Dec. 105 (BIA 1984). We have held that an alien must demonstrate that he has been prejudiced by a violation of a procedural rule or regulation before his deportation proceeding will be invalidated. *See Matter of Garcia-Flores*, 17 I&N Dec. 325, 329 (BIA 1980). The (b) (6) has similarly determined that, in due process challenges, there must be a showing of prejudice. *See Hernandez-Gil v. Gonzales*, 476 F.3d 803, 808 (9th Cir. 2007); *see also Colindres-Aguilar v. INS*, 819 F.2d 259, 261-62 (9th Cir. 1987) (citing *Mohssent Behbahani v. INS*, 796 F.2d 249, 251 (9th Cir. 1986) and *United States v. Nicholas-Armenta*, 763 F.2d 1089 (9th Cir. 1985)). To establish prejudice, the respondent must show that the denial of his right to counsel "potentially [affected] the outcome of the proceedings." *See Hernandez-Gil v. Gonzales, supra*. Considering the testimony in this case, there is no indication that competent legal counsel would have had any effect on the outcome of these proceedings. Thus, prejudice has not been established.

Concerning the respondent's appeal, we adopt and affirm the decision of the Immigration Judge with the following additions. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994) (noting that adoption or affirmance of a decision of an Immigration Judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those the Immigration Judge articulated in his or her decision"). We agree that the respondent failed to establish past persecution or torture. In addition, as the Immigration Judge noted, the evidence of record indicates that the government of El Salvador has taken steps to arrest gang members, thus, there is no indication that the government would not protect the respondent from such gangs or would participate in or acquiesce to any persecution for refusing to join a gang. There is likewise insufficient evidence that the respondent would be presumed to be a member of a gang, as he has claimed not have joined a gang. Furthermore, the respondent failed to establish that any harm or fear of harm for failure to join a gang (or for being considered to be associated with a gang) would constitute persecution on account of a protected ground. *See See INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987); *see also Tecun-Florian v. INS*, 207 F. 3d 1107 (9th Cir. 2000) (alien failed to establish that his refusal to join the guerillas resulted in persecution or a fear of persecution on account of one of the protected grounds enumerated in the Act); *Arteaga v. Mukasey*, 2007 WL 4531961 (9th Cir. Dec.27, 2007) (determining that membership in an El Salvadoran gang did not constitute membership in a particular social group). There is no indication that the absence of counsel affected the respondent's ability to establish a nexus between the fear of any harm and a protected ground in this case. We have considered the respondent's arguments in his appellate brief, concerning nexus, and we find that a nexus has not been established in this case. Concerning protection under the Convention Against Torture, we agree that, regardless of nexus, there is insufficient evidence that it is more likely than not that the respondent would be tortured upon returning to El Salvador.

In sum, we agree that the respondent failed to meet his burden of proof for any of the relief or protection requested. Accordingly, the respondent's appeal is dismissed.

FOR THE BOARD