File: (b) (6) Date: DEC 22 2010

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Jeffrey S. Renzi, Esquire

ON BEHALF OF DHS: Catherine E. Halliday-Roberts
Deputy Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -
Convicted of aggravated felony (as defined in section 101(a)(43)(F))

Lodged: Sec. 237(a)(2)(A)(ii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(ii)] -
Convicted of two or more crimes involving moral turpitude

APPLICATION: Convention Against Torture

On (b) (6) the United States Court of Appeals for the (b) (6) remanded this matter to the Board for us to reconsider the denial of the respondent's application for protection under the Convention Against Torture (CAT). We will grant the respondent's motion to remand the record.

On September 7, 2006, the Immigration Judge found the respondent, a native and citizen of El Salvador, removable under sections 237(a)(2)(A)(ii) and 237(a)(2)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. §§ 1227(a)(2)(A)(ii) and 1227(a)(2)(A)(iii). He denied the respondent's applications for cancellation of removal under section 240A(a) of the Act, 8 U.S.C. § 1229b(a), a waiver of inadmissibility under former section 212(c) of the Act, 8 U.S.C. § 1182(c), asylum and withholding of removal to El Salvador pursuant to sections 208(b) and 241(b)(3) of the Act, 8 U.S.C. §§ 1158(b) and 1231(b)(3), respectively, and protection pursuant to the CAT, 8 C.F.R. §§ 1208.16-.18. On January 8, 2007, the Board dismissed the appeal.

The Circuit Court of Appeals upheld the denial of relief under former section 212(c) of the Act, and found all of the respondent's other claims to have been waived or otherwise unpreserved excepting his CAT claim. With regard to that claim, the court concluded that the Board and Immigration Judge erred by failing to explicitly consider the Department of State, *Country Report 2005 - El Salvador* in support of the respondent's claim of eligibility for deferral of removal under the CAT, and by misconstruing the regulatory term "acquiescence" by not applying the "awareness and willful blindness" standard. (b) (6) *v. Holder*, (b) (6) As country

conditions may have changed in the intervening period, and the respondent submitted additional evidence on appeal, which has not been considered by the Immigration Judge, the record will be remanded for further proceedings, as the respondent has requested. *See* 8 C.F.R. § 1003.1(d)(3); *Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). *See also* (b) (6) ("we expect that on remand (b) (6) will be permitted to introduce the omitted documentary evidence that formed the basis of the ineffective assistance claim"). The Immigration Judge shall review all the record evidence—including the testimony, Country Report and other evidence previously introduced, as well as all evidence to be introduced on remand—under the "awareness and willful blindness" standard as directed by the (b) (6) *Id.* at (b) (6)

Accordingly, the record will be remanded.

ORDER: The motion to remand is granted; the record is remanded for further proceedings consistent with the above decision.

FOR THE BOARD