U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

(b) (6)

In the Matter of: Case A (b) (6)

Re (b) (6)
IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 4-20-2012. 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_____.
[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to_____ 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 _____~~ modified.
[✓] Respondent's application for asylum was (✓) granted ( ) denied ( ) withdrawn.
[✓] Respondent's application for withholding of removal was ( ) granted ( ) denied ( ) ~~withdrawn~~ modified.
[✓] Respondent's application for withholding/deferral of removal under Article 3 of the U.N. Convention Against Torture was ( ) granted ( ) denied (✓) ~~withdrawn~~ modified.
[ ] Respondent's application for cancellation of removal under Section 240A(a) was ( ) granted ( ) denied ( ) withdrawn.
[ ] Respondent's application for cancellation of removal under Section 240A(b) was ( ) granted ( ) denied ( ) withdrawn. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
[ ] Respondent's application for a waiver under Section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn ( ) other.
[ ] Respondent's application for adjustment of status under Section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn. If granted, it was ordered that respondent be issued all appropriate documents necessary to give effect to this order.
[ ] Respondent's status was rescinded under Section 246.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, so that the respondent can apply for
[ ] Other: Adjustment of status under 245i after 365 days elapses

Date: 4-20-2012

Craig M. Zerbe
Immigration Judge

APPEAL: Reserved/Waived (Alien/DHS/Both)

NOV 2 4 2008

File: (b) (6) Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Maria Baldini-Potermin, Esquire

CHARGE:

Notice: 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

The United States Court of Appeals for the (b) (6) has remanded the respondent's case to the Board for further proceedings on the respondent's asylum claim. *See* (b) (6) *v. Mukasey*, (b) (6) Significantly, the (b) (6) found no error in the Board's decision finding (1) that the respondent was provided with a full and fair hearing on the merits of his claim; and (2) that neither the respondent's mental illness nor his status as a returning Jewish refugee from the United States is cognizable as a particular social group under the Immigration and Nationality Act. *See* (b) (6) *v. Mukasey*, *supra* at (b) (6) However, the (b) (6) (b) (6) concluded that substantial evidence did not support the Board's determination that the respondent did not suffer past persecution in Russia. *See* (b) (6) *v. Mukasey*, *supra* at (b) (6) The Court determined that a remand was appropriate because, in finding that the respondent did not suffer past persecution, neither the Immigration Judge nor the Board properly considered the "cumulative significance" of the events recounted by the respondent and his mother. Particularly, the two primary incidents alleged by the respondent were not properly viewed in light of the more pervasive background of harassment and threats endured by the respondent and his entire family. Nor was proper consideration given to the age of the respondent at the time of the alleged events. *See* (b) (6) *v. Mukasey*, *supra*. In addition, the (b) (6) determined that neither the Immigration Judge nor the Board properly addressed, in the first instance, whether the respondent qualified for humanitarian asylum based on the respondent's past persecution and the "possibility [of] . . . other serious harm." (b) (6) *v. Mukasey*, *supra*, at (b) (6) (citing 8 C.F.R. § 1208.13(b)(1)(iii)(B)). As a result, the court remanded the respondent's case to the Board solely to consider the respondent's claim for asylum based on past persecution and based on humanitarian concerns. Specifically, the Court stated that on remand, the Board "first must determine whether, according to the standards that we have articulated here, [the respondent] has suffered past persecution. If it determines that [the respondent] has suffered past persecution, it then must evaluate whether the Government has met its burden of rebutting the presumption of future persecution based on conditions in Russia at that time-a determination that undoubtedly will require the consideration of new evidence. Finally, the [Board] must evaluate [the respondent's] claim of

humanitarian asylum under the regulatory standard set forth in 8 C.F.R. § 1208.13(b)(iii)(B)." (b) (6) *v. Mukasey, supra* a(b) (6)

Under the circumstances, we find it appropriate to remand the respondent's case to the Immigration Judge solely to make relevant findings of fact and enter a legal determination on the respondent's claim for asylum based on past persecution and based on humanitarian concerns in the first instance that is consistent with the (b) (6) decision described above. *See, e.g., Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002) (recognizing the Boards's limited fact finding abilities in deciding appeals and thus the heightened importance for Immigration Judges to make comprehensive findings of fact that are supported by the record and are in compliance with controlling law); 8 C.F.R. § 1003.1(d)(3). Accordingly, we will enter the following order.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing decision.

FOR THE BOARD

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

DEC - 6 2006

File: (b) (6) Date:

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Maria Baldini-Potermin, Esquire

CHARGE:

Notice: 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: Asylum; withholding of removal; relief under the Convention Against Torture

This matter was last before the Board on September 7, 2005. At that time, we dismissed the respondent's appeal of the Immigration Judge's March 11, 2005, decision denying the respondent's applications for asylum and withholding of removal pursuant to sections 208(a) and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(a) and 1231(b)(3), respectively, and his request for relief under the Convention Against Torture. *See* 8 C.F.R. § 1208.16 (2006). On (b) (6) pursuant to a motion to remand filed by the government, the United States Court of Appeals for the (b) (6) remanded the record to the Board for further proceedings. Specifically, the (b) (6) ordered the Board to consider the respondent's claims that "he is a member of a protected social group and that, as a refugee, a legal presumption should have been applied to his claims for asylum and withholding of removal." *See* (b) (6) remand order.

The respondent's brief raises a number of issues in challenging our previous decision, including due process claims in relation to the Immigration Judge's conduct in the prior hearings (Respondent's Br. at 4, 18-33). We find it unnecessary to address most of these contentions because such issues were properly analyzed and decided in our prior decision. *See* Board's September 7, 2005, decision. Moreover, the (b) (6) did not express any disagreement with many of the issues that the respondent seeks to have reconsidered, and as a result, we will confine the scope of our decision here to the stated purpose of the Court's remand, as noted above. *See id.*

We have previously determined that membership in a particular social group refers to membership in a group of people all of whom share a common, immutable characteristic, namely, a characteristic that is either beyond the power of the individual members to change, or that is so fundamental to their identities or consciences that it should not be required to be changed. *See Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985), *modified on other grounds, INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987); *see also*

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Matter of Kasinga, 21 I&N Dec. 357 (BIA 1996); *Matter of H-*, 21 I&N Dec. 337 (BIA 1996); *see generally Lwin v. INS*, 144 F.3d 505, 512 (7th Cir. 1998) ("Having considered the various approaches selected by other circuits, we believe that the best approach is to accept the formulation proposed by the BIA in *Acosta* . . . ."). In examining whether the respondent has demonstrated that he is a member of a particular social group under the Act, we recognize that he seeks to include himself in a host of such groups based on any of the alleged characteristics that he possesses, or a combination thereof. For example, he asserts that his social group status consists of membership in the following groups: (1) his Jewish family, (2) mentally ill individuals, (3) criminal deportees, (4) Jewish refugees who have been resettled in the United States, and (5) Jews (Respondent's Br. at 36-42, 50-51, 55-57).

As an initial matter, we note that the Immigration Judge in this case previously determined that the respondent's mental illness does not qualify as a cognizable particular social group because such a trait is not immutable. *See* I.J.'s March 11, 2005, decision at 16. Specifically, the Immigration Judge concluded that "[u]nlike one's tribal affiliation or parentage, the respondent's mental illness can be treated with medication . . . ." *See id.* We agree with these findings and, moreover, we find that the respondent has failed to illustrate any error in the Immigration Judge's analysis of his purported social group in this regard. The respondent has also failed to present any controlling case law from the United States Court of Appeals for the (b) (6) in whose jurisdiction this case arises, holding that one's mental illness can be used to define a particular social group (Respondent's Br. at 36-37, 55-57).

The respondent also has not substantiated his contentions regarding his social group membership consisting of criminal deportees or Jewish refugees who have been resettled in the United States (Respondent's Br. at 37). The respondent has presented little more than conclusory claims based on these grounds and has utterly failed to show how either of these supposed groups can constitute a recognizable social group under the Act. Furthermore, the (b) (6) has held that "[w]hatever its precise scope, the term 'particular social groups' surely was not intended for the protection of members of the criminal class in this country, merely upon a showing that a foreign country deals with them even more harshly than we do." *See Bastanipour v. INS*, 980 F.2d 1129, 1132 (7th Cir. 1992); *see also Toussaint v. United States Attorney General*, 455 F.3d 409, 418 (3d Cir. 2006) ("[W]e are impressed with the precedents of other courts of appeals establishing that, for purposes of the INA, criminal deportees are not recognized as a social group . . . . We will follow those precedents as we hardly can conceive that Congress would select criminals as a group warranting special protection in removal cases.").

The respondent has similarly failed to provide any legal precedent or standard in demonstrating how Jewish refugees who have been resettled in the United States can constitute a protected social group. Further, even presuming the immutability of the respondent's experiences in this regard – consisting of a previous grant of refugee status and thereafter resettling in the United States – we do not find that these characteristics are the kind of shared past experiences that constitute membership in a particular social group. *See Matter of C-A-*, 23 I&N Dec. 951, 958 (BIA 2006) ("stating that although "[a] past experience is, by its very nature, immutable, as it has already occurred and cannot be undone," this fact "does not mean that any past experience that may be shared by others suffices to define a particular social group for asylum purposes"); *see generally Castillo-Arias v. United States Attorney General*, 446 F.3d 1190, 1198 (11th Cir. 2006) ("In restricting the grounds for asylum and withholding of deportation based on persecution to five enumerated grounds, Congress could not have intended that all individuals seeking

this relief would qualify in some form by defining their own 'particular social group.'"). Specifically, we do not find that these temporal group characteristics are fundamental to its members' "individual identities or consciences." *See Matter of Acosta, supra*, at 233-34. Additionally, we conclude that the social visibility of the group in question has not been adequately demonstrated. *See Matter of C-A-, supra*, at 959-61 (finding that social visibility and recognizability of members of a claimed social group are important factors in determining the existence of a particular social group under the Act).

With respect to the respondent's familial status, the (b) (6) has recognized that a family can be a cognizable social group under the Act. *See Iliev v. INS*, 127 F.3d 638, 642 (7th Cir. 1997); *Lwin v. INS, supra*, at 511; *but see Gonzales v. Thomas*, 126 S.Ct. 1613 (2006) (remanding to the Board to make such a determination).[1] We also find that the respondent's Jewish background can constitute more than one protected ground under the Act (Respondent's Br. at 35-36). *See* section 101(a)(42)(A) of the Act; 8 U.S.C. § 1101(a)(42)(A) (defining the term "refugee" as individual who, *inter alia*, has suffered past persecution or has a well-founded fear of future persecution "on account of race, religion, nationality, membership in a particular social group, or political opinion"); *Kourski v. Ashcroft*, 355 F.3d 1038, 1039 (7th Cir. 2004) ("Jews constitute an ethnic group as well as a religious one."). Further, we affirm the Immigration Judge's conclusion that the respondent's "Jewish identity has religious, cultural and ethnic dimensions such that it qualifies as a religion, *particular social group* or nationality for purposes of establishing eligibility for asylum." *See* I.J's March 11, 2005, decision, at 16 (emphasis added). Thus, we conclude that the respondent has demonstrated membership in two social groups that are protected under the Act, one based on his Jewish background, and another based on his membership in his Jewish family (Respondent's Br. at 36-37, 41-42, 50-51).

Nonetheless, we find that the respondent failed to demonstrate a well-founded fear of persecution on account of either of these particular social groups (Respondent's Br. at 43-57).[2] *See Matter of Toboso-Alfonso*, 20 I&N Dec. 819, 822 (BIA 1990) ("[T]he immigration judge's initial finding that a particular social group existed in Cuba was not 'tantamount to awarding discretionary relief' to that group. Individuals in a particular social group are not eligible for relief based on that fact alone [as] . . . they must establish facts demonstrating" past persecution, a well-founded fear of persecution, or "that their life or freedom would be threatened because of that status."). Specifically, in taking administrative notice of the most recent publications from the United States Department of State, which were submitted by the respondent after the (b) (6) s decision (*see Country Report on Human Rights Practices for Russia* (2005) and *International Religious Freedom Report for Russia* (2006) ("Religious Freedom Report")), we find that there is insufficient evidence to show that he has an objectively reasonable well-founded fear of persecution. *See Chen v. Gonzales*, 457 F.3d 670, 674 (7th Cir. 2006) ("[A]n asylum applicant cannot prevail unless [he] can show both that [he] subjectively fears persecution and that there

[1] We will assume arguendo in this case that a family can be a particular social group.

[2] We note that the (b) (6) did not disagree with or otherwise comment on our previous finding that the respondent's prior abuse – consisting of harassment and demeaning treatment by his classmates and school teachers when he was a child in Russia – did not rise to the level of persecution under the Act (I.J.'s March 11, 2005, decision at 4-5, 14; Tr. at 144-151). *See* Board's September 7, 2005, decision at 2. Consequently, we find no reason to disturb our conclusion in this regard.

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is an objectively reasonable possibility [he] will be persecuted."); *see also Matter of R-R-*, 20 I&N Dec. 547, 551 (BIA 1992) (recognizing the power of administrative agencies to take administrative notice of commonly-known facts). These country reports show that the Russian government has condemned anti-Semitism and is taking affirmative steps to combat and prosecute hate crimes through new and "more rigorous amendments to the existing Law on Countering Extremist Activity." *See* Religious Freedom Report at 6. Further, after noting that "[e]xplicit, racially motivated violent attacks against Jews were fairly rare," the Religious Freedom Report documented a series of attacks near a Moscow Synagogue in 2004-05, which ended after the "police promptly found the perpetrators," who were "prosecuted and convicted," and concluded that "attacks against Jews in the neighborhood stopped [thereafter]." *See* Religious Freedom Report at 16. Moreover, the Religious Freedom Report observed that "[t]here were three known explicit anti-Semitic violent attacks and four incidents of public insults and threats in 2005, which was down from 2004." *See id*; *see also Sharif v. INS*, 87 F.3d 932, 935 (7th Cir. 1996) ("Merely alleging a fear of future persecution is not enough" given that "in order to demonstrate a well-founded fear, a petitioner must present specific, detailed facts showing a good reason to fear that he or she will be singled out for persecution" (*quoting Zulbeari v. INS*, 963 F.2d 999, 1000 (7th Cir. 1992)).

Notwithstanding the decrease in threats and violent attacks directed at Jews, as specifically noted in the above country reports, the respondent alleges that anti-Semitism continues to rise in Russia as the government has "not taken adequate steps to protect Jews from attacks and discrimination" (Respondent's Br. at 46-47). The respondent also contends that "conditions for Jews in Russia were worse in 2004 than in 1992 when he came to the U.S. as a refugee" (Respondent's Br. at 52). Although the respondent cites to news reports that confirm the existence of generalized discrimination against Jews, in addition to occasional violence, he has not shown that the threats directed toward Jews are increasing or that the government fails to investigate and charge the perpetrators of such attacks. *See Chen v. Gonzales*, *supra*, at 674 (stating that generalized evidence is an "insufficient basis for granting asylum") (*citing Rashiah v. Ashcroft*, 388 F.3d 1126, 1133 (7th Cir. 2004)). We also note that the admission of the respondent and his family to the United States as refugees, which is discussed below, occurred many years ago – in 1992 when he was 15 years old – and the country conditions that precipitated their grant of refugee status is an overly speculative indicator of his current eligibility for relief (Respondent's Br. at 4; Exh. 1). *See id.* at 675. As a result, the respondent has not demonstrated a reasonable possibility of suffering persecution due to his Jewish background or membership within his Jewish family.

Further, we note that the respondent has failed to show that the threat of persecution exists country-wide in Russia. Notwithstanding the respondent's assertions that he could not safely live in Russia (Respondent's Br. at 44-45, 54-55), he has not demonstrated that he fears persecution on a country-wide basis. *See Matter of C-A-L-*, 21 I&N Dec. 754, 757 (BIA 1997) ("This Board has found that an alien seeking to meet the definition of a refugee must do more than show a well-founded fear of persecution in a particular place within a country," and that he or she "must show that the threat of persecution exists . . . country-wide"(citing *Matter of R-*, 20 I&N Dec. 621 (BIA 1992))); *Matter of Acosta*, *supra*, at 235 (stating that an alien seeking to demonstrate a well-founded fear of persecution "must show that the threat of persecution exists . . . country-wide"). Similarly, the respondent has not shown that he cannot safely relocate within Russia. *See* 8 C.F.R. § 1208.13(b)(2)(ii) (stating that an asylum "applicant does not have a well-founded fear of persecution if the applicant could avoid persecution by relocating to another part of the applicant's country . . . if under all the circumstances it would be reasonable to expect the applicant

to do so"); *see generally Quintanilla-Ticas v. INS*, 783 F.2d 955, 957 (9th Cir. 1986) ("Even if petitioners would face some danger in their home town . . . deportation to El Salvador does not require petitioners to return to the area of the country where they formerly lived").

Having determined that the respondent has not demonstrated a well-founded fear of persecution on account of his membership in a particular social group, we turn to the (b) (6) remaining directive, whether a legal presumption should have been applied to his claims for asylum and withholding of removal. An applicant for relief must make a showing of past persecution before a rebuttable presumption of a well-founded fear of future persecution can applied to his claim. *See* 8 C.F.R. § 1208.13(b)(1). Where the applicant has demonstrated past persecution "the [Department of Homeland Security (DHS, formerly the Immigration and Naturalization Service)] shall bear the burden of establishing by a preponderance of the evidence" that the presumption of future persecution has been rebutted. *See* 8 C.F.R. § 1208.13(b)(1)(ii). In this case, the respondent maintains that his entry to the United States in 1992 based on being granted refugee status necessarily establishes that he suffered past persecution (Respondent's Br. at 34-43; Exh. 1). Further, the respondent argues that because the DHS "provided no evidence that [he] and his family were granted refugee status based on a well-founded fear of persecution rather than past persecution," both the Immigration Judge and the Board erred in determining that his prior admission as a refugee did not establish that he suffered past persecution (Respondent's Br. at 43). Thus, the respondent claims that he is entitled to a presumption of future persecution (Respondent's Br. at 45-49).

We find that the respondent has not shown that he is entitled to a presumption with respect to his asylum and withholding of removal claims. First, we note that the respondent has not come forward with any precedent case law from the (b) (6) or the Board holding that an alien's prior grant of refugee status continues to provide him or her with the rebuttable presumption of future persecution even after he or she becomes a lawful permanent resident. *See* I.J.'s March 11, 2005, decision at 13. Rather, although we are not aware of any precedential decision that has directly addressed whether a legal presumption should be applied to an alien's asylum and withholding of removal claims where he or she was previously granted refugee status and thereafter became a lawful permanent resident, we note that the Third Circuit recently examined a similar factual scenario and did not find that a prior refugee admission necessitated the application of this regulatory presumption. *See Romanishyn v. AG of the United States*, 455 F.3d 175, 179 (3d Cir. 2006). Specifically, in denying an alien's petition for review following the Board's dismissal of the alien's appeal, the Court remarked that the Immigration Judge concluded "that the evidence did not show that Mr. Romanishyn had suffered past persecution, and so the regulatory presumption of future persecution, 8 C.F.R. § 208.16(b)(1), was not triggered." *See id.* The Court, accordingly, found no error in the Immigration Judge's determination that the alien was not entitled to the presumption of future persecution notwithstanding the fact that he had "entered the United States with his family as a refugee [on March 11, 1996] pursuant to 8 U.S.C. § 1157," and thereafter "adjusted his status to that of a lawful permanent resident, or LPR, on June 26, 1997." *See id.* at 178.

Further, as noted above and discussed in greater detail by the Immigration Judge – whose findings were affirmed in our prior decision with regard to the respondent's eligibility for relief – the respondent has not established past persecution. *See* I.J.'s March 11, 2005, decision at 13-15. Although the respondent and his family entered the United States as refugees from Russia on December 16, 1992, the respondent has yet to show that such a designation was due to his having suffered past persecution (Exh. 1). Rather, given

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that the respondent was only 15 years old at the time he entered the United States, it appears that he was granted asylum pursuant to his parents' application, rather than due to his individual claim. As a result, the respondent was an accompanying minor who entered the United States after one or both of his parents were granted asylum as the principal alien(s) in the asylum application (Exhs. 1, 7). *See* 8 C.F.R. § 1208.21(a) ("In accordance with section 208(b)(3) of the Act, a spouse, as defined in section 101(a)(35) of the Act, 8 U.S.C. 1101(a)(35), or child, as defined in section 101(b)(1) of the Act, also may be granted asylum if accompanying, or following to join, the principal alien who was granted asylum . . . ."); *see also* section 101(b)(1) of the Act, 8 U.S.C. § 1101(b)(1) ("The term 'child' means an unmarried person under twenty-one years of age . . . ."). Therefore, we reject the respondent's assertion that the United States government previously found that he suffered past persecution as evidenced by his refugee status in 1992 (Respondent's Br. at 3, 42).

Moreover, given that the respondent's refugee admission was conferred only as a derivative status through his parents' principal asylum claim, he is not entitled to the regulatory presumption of a well-founded of persecution as that protection only attaches to the principal alien who demonstrates eligibility for asylum by virtue of establishing past persecution in his or her own individual capacity. *See generally Ali v. Ashcroft*, 394 F.3d 780, 782 n.1 (9th Cir. 2005) ("Madaar's and Isack's asylum applications are derivative of their mother's application because they were both under age 21 at the time of application."); *Bah v. Gonzales*, 462 F.3d 637, 643 n.3 (6th Cir. 2006) ("Should Bah receive asylum, her unmarried daughters, so long as they are younger than 21, 8 C.F.R. § 208.21(d), 'also may be granted asylum if accompanying, or following to join . . . unless it is determined that [they are] ineligible for asylum.' 8 C.F.R. § 208.21(a)."). Although derivative asylees who subsequently become lawful permanent residents and then are charged with removability, as is the case here, could technically thereafter present a valid asylum claim notwithstanding the fact that they previously entered as refugees, such individuals would have to independently meet the burden of proof for asylum, through a showing of past persecution or a well-founded fear of persecution in his or her individual capacity. Consequently, notwithstanding the respondent's prior admission as a refugee, he is not entitled to a legal presumption for future persecution with respect to his asylum and withholding claims as he has not met his burden of proof of establishing past persecution.

The respondent also argues that the Board erred in determining that "any presumption terminated when he became a lawful permanent resident" given that "[n]either the INA nor the regulations contain any explicit statement that an alien who has been granted refugee status and enters the U.S. as a refugee automatically loses the rebuttable presumption of future persecution upon adjusting his status to become a lawful permanent resident" (Respondent's Br. at 45).[3] The respondent also argues that his refugee status

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[3] In our prior order, we noted that after the respondent was admitted to the United States as a refugee on December 16, 1992, his "status was adjusted to that of a lawful permanent resident on January 15, 1995. under section 209(a) of the Act, and he was, therefore, no longer a refugee when he was placed in removal proceedings (Exh. 1)." *See* Board's September 7, 2005, decision at 2. We also stated that upon the respondent's adjustment of status, "he relinquished his refugee status and assumed all the benefits and potential disadvantages that are accompanied with his acceptance of lawful permanent resident status in the United States." *See id.* at 2-3. We concluded by noting that while the Act does not explicitly mandate

(continued...)

was never terminated pursuant to section 207(c)(4) of the Act, 8 U.S.C. § 1157(c)(4), which is the only statutory provision governing the termination of refugee status, and he consequently remains a refugee despite being granted adjustment of status (Respondent's Br. at 72-78).

Although we find that the respondent was never entitled to the regulatory presumption of a well-founded fear of persecution, we also observe that our prior order was generally consistent with a subsequent decision, *Matter of Smriko*, 23 I&N Dec. 836 (BIA 2005), which had a similar fact pattern to the instant case. In that matter, we considered the case of an alien who entered the United States as a refugee, became a lawful permanent resident, and was thereafter placed in removal proceedings as an alien convicted of crimes involving moral turpitude. In refuting removability, the alien claimed that he could not be ordered removed since his refugee status had not been terminated pursuant to section 207(c)(4) of the Act, and intimated that such status was not automatically extinguished when he became a lawful permanent resident. *See Matter of Smriko, supra*, at 837-38; *see generally Romanishyn v. AG of the United States, supra*, at 181 (summarizing the Board's holding in *Matter in Smriko, supra*). We held, however, that "an alien who has been admitted as a refugee and has adjusted his or her status to that of a lawful permanent resident may be placed in removal proceedings for acts or conduct . . . under section 237(a) of the Act" without the termination of refugee status as a precondition. *See Matter in Smriko, supra*, at 837.[4] Consequently, notwithstanding the respondent's arguments in this regard, the fact that his refugee status has not been formally terminated does not assist him as he remains subject to removal.

Based on the foregoing, we find that the respondent has not demonstrated either past persecution or an objectively reasonable well-founded fear of persecution on account of his membership in a particular social group. *See INS v. Cardoza-Fonseca, supra*; *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23 (BIA 1998). We also find insufficient evidence to grant the respondent relief in the absence of a well-founded fear of future persecution. *See* 8 C.F.R. § 1208.13(b)(1)(iii); *Matter of Chen*, 20 I&N Dec. 16 (BIA 1989). Further, we find that the respondent failed to establish eligibility for withholding of removal and for

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[3] (...continued)
the termination of refugee status when such a refugee becomes a lawful permanent resident, "no plausible reading of the Act would lead to the respondent's contention that a lawful permanent resident who was once granted refugee status continues to possess the legal privileges under such status or is entitled to an additional protection against removability by virtue of a previously held status." *See id.*

[4] Specifically, we held that "Congress did not consider termination of refugee status to be a prerequisite to initiating removal proceedings against aliens admitted as refugees" given that the Act's reference to the terms "any alien" or "the alien" in provisions governing removal proceedings "does not distinguish between aliens admitted as refugees and any other aliens." *See id.* at 838 (*citing* sections 237(a) and 239 of the Act, 8 U.S.C. §§ 1227(a) and 1229, respectively). Further, the lack of any reference to a prior termination of refugee status in the Act's removability provisions indicates that "aliens admitted as refugees are subject to removal proceedings without the preliminary step of terminating refugee status under section 207(c)(4)." *See id.*; *see generally Romanishyn v. AG of the United States, supra*, at 185 ("It was reasonable for the BIA to conclude that, because aliens who entered as refugees were not protected absolutely from removal at the moment they were applying for LPR status, Congress did not intend for them to have such absolute protection after they became LPRs.").

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(b) (6)

relief under the Convention Against Torture (Respondent's Br. at 57-61, 66-71). *See INS v. Cardoza-Fonseca, supra*; *INS v. Stevic*, 467 U.S. 407 (1984); *Matter of R-S-H-*, 23 I&N Dec. 629 (BIA 2003); *Matter of G-A-*, 23 I&N Dec. 366 (BIA 2002). Accordingly, the respondent's appeal will be dismissed.

ORDER: The respondent's appeal is dismissed.

FOR THE BOARD