U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
(b) (6)

In the Matter of:
(b) (6)
RESPONDENT

Case No.: (b) (6)
Docket: (b) (6)
IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

On Jun 25, 2013, at 09:00 A.M., pursuant to proper notice, the above entitled matter was scheduled for a hearing before an Immigration Judge for the purpose of hearing the merits relative to the RESPONDENT request for relief from removal. However,

( ) the respondent was not present.

(X) the respondent's representative was present; however, the respondent was not present.

( ) neither the respondent nor the respondent's representative was present.

Therefore, in the absence of any showing of good cause for the respondent's failure to appear at the hearing concerning the request for relief, I find that the respondent has abandoned any and all claim(s) for relief from removal.

Wherefore, the issue of removability having been resolved, it is HEREBY ORDERED for the reasons set forth in the Department of Homeland Security charging document that the respondent be removed from the United States to INDONESIA.

PAUL M. GAGNON
Immigration Judge
Date: Jun 25, 2013

CERTIFICATE OF SERVICE
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Form EOIR 36 - 7T (FTA)

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: APR 18 2013

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: William A. Hahn, Esquire

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] - In the United States in violation of law

APPLICATION: Asylum

In (b) (6) the United States Court of Appeals for the (b) (6) remanded the case solely for further consideration of the respondent's claim for asylum. Noting that the respondent argues that various country condition reports document a growing trend of intolerance against Christians in Indonesia, the (b) (6) found the respondent is entitled to present an asylum claim based on a well-founded fear of future persecution in Indonesia.

In a decision dated June 26, 2012, the Immigration Judge found that the respondent did not demonstrate either that he has an individualized fear of future persecution in Indonesia on account of his Christianity, or that there is a "pattern or practice" of persecution of Christians by the Indonesian government.

We find that a remand is necessary for the preparation of a new decision by the Immigration Judge. On appeal, the respondent notes that the Immigration Judge was required to make findings based on current country conditions, and yet the Immigration Judge relied on the country conditions from 1998 until 2005, which were considered in the Immigration Judge's initial decision rendered in 2006. The respondent contends that the Immigration Judge's decision was based on a stale record. Therefore, we are remanding this case to the Immigration Court. We note that our decision to remand this matter is tied to deficiencies in the Immigration Judge's decision and should not necessarily be read to indicate disagreement with the Immigration Judge's ultimate resolution of the respondent's application for relief.

ORDER: The record is remanded to the Immigration Court for further proceedings and for the issuance of a new decision consistent with this opinion.

FOR THE BOARD

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

IN THE MATTER OF:

(b) (6)

Respondent

In Removal Proceedings

CHARGE: Immigration and Nationality Act ("INA") § (237)(a)(1)(B) – After admission as a nonimmigrant under Section 101(a)(15) of the Act, you have remained in the United States for a time longer than permitted.

APPLICATION: On Remand from the Board of Immigration Appeals:
Asylum pursuant to Section 208 of the Act

ON BEHALF OF RESPONDENT
William A. Hahn, Esq.
Hahn & Matkov
(b) (6)

ON BEHALF OF DHS
Assistant Chief Counsel
Office of the Chief Counsel
(b) (6)

On Remand from the Board of Immigration Appeals

MEMORANDUM AND ORDER

On April 16, 2010, the Board of Immigration Appeals ("Board" or "BIA"), on remand from the (b) (6) Circuit Court of Appeals, remanded this case for more complete factual findings and legal analysis as to whether Henderson Merk Lumataw ("Respondent") is eligible for asylum.

I. BACKGROUND

On June 26, 2006, the Boston Immigration Court ("Court") issued an oral decision denying the Respondent's request for asylum, withholding of removal, and withholding pursuant to the Convention Against Torture ("CAT") but granting voluntary departure. *See* Decision of the Immigration Judge (June 26, 2006). The Court found that the Respondent was credible. *Id.* at 8. The Court denied the Respondent's asylum claim on the basis he had not timely filed. *Id.* at 7. The Court denied withholding of removal because he had not established past persecution on

account of a protected category, or demonstrated that it was more likely than not that he would be harmed if removed to Indonesia, and denied protection under CAT because he had not demonstrated that he would be tortured at the acquiescence of a government official. *Id.* at 7-9. The Respondent timely appealed. On May 16, 2008, the Board of Immigration Appeals ("Board" or "BIA") dismissed the Respondent's appeal. *See* Decision of the Board of Immigration Appeals (May 16, 2008). The Respondent subsequently appealed to the (b) (6) Circuit Court of Appeals (b) (6) . *See* (b) (6) The (b) (6) found that the Respondent had in fact satisfied an exception to the requirement to the one year filing deadline for asylum. *Id.* The (b) (6) upheld the Court's decision as to past persecution, withholding of removal, and protection under CAT.[1] *Id.* The (b) (6) remanded to the Board, which remanded to the Court for a decision on the Respondent's eligibility for asylum. *See* Decision of the Board of Immigration Appeals (April 16, 2010).

The Court herein incorporates its June 26, 2006 decision as to its findings of fact and its conclusion that the Respondent had not established that he suffered past persecution, which was upheld by the Board and the (b) (6) . *See* (b) (6) Furthermore, because the (b) (6) upheld the Court's decision as to withholding of removal and relief under CAT, the Court solely addresses the issue of the Respondent's well-founded fear of persecution if removed to Indonesia.

II. DECISION ON WELL-FOUNDED FEAR OF FUTURE PERSECUTION

An individual who has not suffered past persecution may receive asylum if he or she demonstrates a well-founded fear that his life or freedom would be threatened in the future on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 C.F.R. § 1208.16(b)(2). Moreover, the applicant must demonstrate that his or her fear is both subjectively genuine and objectively reasonable. *Toloza-Jimenez v. Gonzales*, 457 F.3d 155, 161 (1st Cir. 2006). A person satisfies the objective prong by producing "credible, direct, and specific evidence supporting a fear of individualized persecution in the future," or by demonstrating a "pattern or practice" in his or her own country of nationality of persecution of a group of persons similarly situated to the applicant on account of a protected ground. *Guzman v. INS*, 327 F.3d 11, 16 (1st Cir. 2003); 8 C.F.R. § 1208.13(b)(2)(iii).

In addition to the above, the persecution must be the direct result of government action, government-supported action, or government's unwillingness or inability to control private conduct. *Orelien v. Gonzales*, 467 F.3d 67, 72 (1st Cir. 2006) (quoting *Nikijuluw v. Gonzales*, 427 F.3d 115, 121 (1st Cir. 2005)); *see also Da Silva v. Ashcroft*, 394 F.3d at 7 ("Action by non-governmental actors can undergird a claim of persecution only if there is some showing that the alleged persecutors are in league with the government or are not controllable by the government."). "[A]n applicant seeking to establish persecution by a government based on violent conduct of a private actor must show more than 'difficulty ... controlling' private behavior." *Ortiz-Araniba v. Keisler*, 505 F.3d 39, 42 (1st Cir. 2007); *Matter of McMullen*, 17 I&N Dec. 542, 546 (BIA 1980). An applicant must show the government's acquiescence in the persecutor's acts or its inability or unwillingness to investigate and punish those acts, and not just

[1] Both the (b) (6) Circuit and the Board found this application to be waived.

a general difficulty preventing the occurrence of particular future crimes. *Ortiz-Araniba*, 505 F.3d at 42; *Harutyunyan v. Gonzales*, 421 F.3d 64, 68 (1st Cir. 2005).

The Court finds that the Respondent has not established a well founded fear of future persecution. First, the (b) (6) Circuit has affirmed the Board's determination that persecution against Christians or Chinese in Indonesia does not rise to the level of "pattern or practice." *See Sugiarto v. Holder*, 586 F.3d 90, 97 (1st Cir. 2009); *Decky v. Holder*, 587 F.3d 104 (1st Cir. 2009) (the Court held that documentary materials acknowledging that ethnic Chinese and Christians continued to face difficulties in Indonesia not encountered by the Muslim majority did not compel a finding of pattern or practice of persecution sufficient to qualify aliens for asylum); *Pakasi v. Holder*, 577 F.3d 44 (1st Cir. 2009) (finding that petitioners did not establish a well-founded fear of future persecution in Indonesia, where alien's wife and child remained in Indonesia without harm for two years after husband's departure, husband had traveled to Singapore for a number of days and voluntarily returned to Indonesia, and there was no ongoing pattern or practice of persecution against Christians in the country).

The evidence the Respondent submitted likewise does not demonstrate that Christians are "systematically persecuted" in Indonesia. *Banturino v. Holder*, 576 F.3d 10, 14 (1st Cir. 2009). Much of the evidence submitted discusses the 2005 Bali bombings, which appear to have targeted tourists, without explaining why it is relevant to the Respondent's asylum claim. *See generally* Exh. 4 (unpaginated). The violent acts that do occur appear to be the work of extremists and are not sanctioned by the Indonesian government, which has worked since a terrorist attack in 2002 to combat extremist militant groups and prevent such terrorist attacks, and has held trials for the militants responsible. *See id.* The rest of the articles are from the 1998 riots, which occurred more than a decade ago. The Respondent submitted no evidence indicating that these riots are ongoing. Nearly all the country conditions materials attribute the mistreatment and attacks of Christians to Muslim extremists, without any indication that the government sanctions such extremism. *Id.* The International Religious Freedom Report indicates that the government "generally respects" religious freedom. *Id.* Accordingly, the Court does not find that the Respondent has presented evidence that demonstrates that there is in fact a "pattern or practice" of persecution of Christians by the Indonesian government.

The Respondent has also not demonstrated that he has an individualized fear of future persecution on account of his Christianity. Most probative to the Court is the fact that his family members, who also practice Christianity and live in his home province of Manado, have not been harmed in Indonesia. *Matter of A-E-M*, 21 I&N Dec. 1157 (BIA 1998) (reasonableness of an alien's fear of persecution is reduced when his family remains in his native country unharmed for a long period of time after his departure). The Respondent's wife's family also has not been targeted for any mistreatment since she came to the United States.

Other than the robbery, the Respondent was able to peacefully practice his religion for his entire life and he has not presented any evidence indicating that since his departure, his church or church members have been harmed in Indonesia. Even though some extremist groups used violence against Christians, the evidence indicates that the government generally respected religious freedom, and did not support or sanction the violent actions of Muslim extremists. Exh. 4.

The Respondent has failed to demonstrate that he has a well-founded fear of future persecution and thus his request for asylum fails.

III. ORDERS

IT IS HEREBY ORDERED that the Respondent's application for asylum pursuant to Section 208 of the Act is **DENIED**.

This case is therefore returned to the Board of Immigration Appeals for further consideration of the Respondent's appeal.

June 26, 2012

Date

PAUL M. GAGNON
United States Immigration Judge

File: (b) (6) Date: APR - 9 2010

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: William A. Hahn, Esquire

APPLICATION: Asylum; withholding of removal; protection under the Convention Against Torture

The record was last before us on May 16, 2008, when we dismissed the respondent's appeal from the Immigration Judge's June 26, 2006, decision finding insufficient changed circumstances to excuse his failure to timely file his application for asylum, and denying his application for withholding of removal and his request for protection under the Convention Against Torture (CAT). On (b) (6) the United States Court of Appeals for the (b) (6) affirmed our determination with respect to the respondent's application for withholding of removal, but remanded the case to us for further consideration of the respondent's claim for asylum.[1] The court ruled that the Board and the Immigration Judge erred in assessing the timeliness of the respondent's application, and remanded for further consideration of the application for asylum.

The respondent asserts in his post-remand filing that the court's decision requires a further remand to the Immigration Judge. Because further fact finding is required, we agree that a remand to the Immigration Judge is appropriate. Accordingly, the decisions of the Immigration Judge and the Board with respect to asylum relief will be vacated, and the case will be remanded to the Immigration Judge for further proceedings.

ORDER: The decisions of the Board on May 16, 2008, and the Immigration Judge on June 26, 2006, are vacated with respect to the respondent's application for asylum relief.

FURTHER ORDER: The record is remanded for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Frederick D. Hess

FOR THE BOARD

[1] Because the respondent did not raise the CAT claim in his circuit court brief, "that basis for his application [was] deemed waived" by the court.