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:

In re: (b) (6)

MAY 22 2003

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF SERVICE: Monika Sud-Devaraj
Assistant District Counsel

CHARGE:

Notice: Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] - Immigrant - no valid immigrant visa or entry document

APPLICATION: Asylum; withholding of removal

This case was last before us on April 10, 2000, when we dismissed the respondent's appeal from an Immigration Judge's decision denying his applications for asylum and withholding of removal. In dismissing the case, we upheld the Immigration Judge's finding that the respondent did not testify credibly at his removal hearing. On (b) (6) the United States Court of Appeals for the (b) (6) granted the respondent's petition for review, and found the respondent eligible for asylum and for withholding of removal. The court reversed the Board's adverse credibility finding and stated that the respondent's statements "should be accepted as true." (b) (6) *v. INS*, (b) (6) . That court denied the government's petition for rehearing and for rehearing en banc on (b) (6)

On (b) (6) the United States Supreme Court vacated the (b) (6) decision in this case and remanded the matter back to the (b) (6) for further consideration in light of its decision in *INS v. Ventura*, 123 S.Ct. 353 (2002). In that decision, the Court held that the court of appeals should have remanded the asylum case to the Board for the Board to consider changed circumstances in Guatemala, rather than granting the alien asylum outright.

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In a decision dated (b) (6) the (b) (6) remanded this case back to us "to decide (b) (6) application for asylum and withholding of removal." In remanding, however, the court of appeals cautioned that, "we stress that this court's reversal of the BIA's adverse credibility finding still stands based upon the analysis in our prior opinion," and stated that the case should be further considered "in light of our prior ruling on (b) (6) credibility."

In view of the (b) (6) ruling that the respondent testified credibly, we will grant his application for asylum, as we note that our prior decision in this case was based on our conclusion that the respondent's testimony was not believable or consistent. Taking the respondent's testimony as true, as the court's decision requires us to do, we find that he suffered past persecution upon his return to China in 1996. When he returned, he was taken into custody at the airport, driven to a detention center, and severely beaten. Tr. at 55-57. He was hospitalized due to this beating for a month. He managed to escape from the hospital and went into hiding before returning to the United States.

According to the respondent, he was sought out for punishment because he had married his wife while they were underage, and had a child with her. He stated that these actions brought him to the attention of the family planning officials, who harassed him and his wife before his first departure for the United States. The respondent stated that he feared returning to China because he had violated the family planning laws and had been punished for it, and because he has twice left China without permission, and had escaped from a detention facility hospital. He testified that, "all this accumulation is a big thing in China." Tr. at 66.

It is now well-established that an alien whose spouse has been forced to undergo an abortion or sterilization procedure can establish past persecution on account of political opinion for asylum purposes. *See* section 601(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-625 (IIRIRA); *Matter of C-Y-Z-*, 21 I&N Dec. 915 (BIA 1997). *See also Matter of X-P-T-*, 21 I&N Dec. 634 (BIA 1996).

In this case, there is no indication that the respondent's wife actually was forced to have an abortion or be sterilized. In fact, she did give birth to a baby boy while the respondent was in this country the first time. However, according to the respondent's testimony, he and his wife were harassed by family planning officials in China because they were underage when they married and became pregnant. Further, the respondent was picked up by the authorities immediately upon his return to China in 1996. He was then detained and badly beaten, and then escaped from the detention facility where he was being held.

Given all these circumstances, we conclude that the respondent suffered past persecution on account of a protected ground in China. We further find that the presumption of future persecution has not been overcome. We note that in the (b) (6) the presumption of future persecution may only be rebutted by evidence of changed country conditions that, on an individualized basis, rebuts

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the alien's specific claim. *See, e.g.,* (b) (6) *v. Ashcroft,* (b) (6) No such evidence has been presented in this case, nor has it been alleged that China is no longer enforcing family planning laws.

Having found the respondent eligible for asylum, we find no basis for denying his application for asylum in the exercise of discretion. *See generally Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996). The respondent's application for asylum will therefore be granted and the removal proceedings will be terminated. In view of the termination of proceedings, any application for withholding of removal is moot. *See Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987). Accordingly, the following orders will be entered.

ORDER: The appeal from the Immigration Judge's denial of asylum is sustained.

FURTHER ORDER: The Board's decision in this case dated April 10, 2000, is vacated, the application for asylum is granted, and the removal proceedings are terminated.

FOR THE BOARD