UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
[redacted]

In the Matter of: **File No.: A**

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the Joint Motion to Dismiss without Prejudice, the Court states the following:

1. The parties have agreed to the dismissal of the instant proceedings without prejudice so as to permit the respondent to pursue adjustment of status before U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security.

2. Other:_____.

THEREFORE, it is HEREBY ORDERED that the motion be:

[✓] **GRANTED.** Good cause has been established for this motion. These proceedings are hereby terminated without prejudice. This termination order does not constitute a final judgment rendered on the merits of these proceedings.

[ ] **DENIED.** _____

Immigration Judge Date: 9/20/11

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File: (b) (6)

Date:

In re: (b) (6)

MAY 27 2009

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Gregory Kuntashian, Esquire

ON BEHALF OF DHS: Khalilah M. Taylor
Assistant Chief Counsel

APPLICATION: Withholding of removal

This case is before this Board pursuant to a remand issued by the United States Court of Appeals for the (b) (6) in whose jurisdiction the present matter arises. *See* (b) (6) *v. Mukasey*, (b) (6) For reasons that will be set forth below, the record will be remanded to the Immigration Court.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under a "clearly erroneous" standard. *See Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008); *see also Mendez v. Mukasey*, 525 F.3d 216, 220 n.4 (2d Cir. 2008). We review all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion, under a *de novo* standard. *See Id.*; *see also Matter of Almanza-Arenas*, 24 I&N Dec. 771 (BIA 2009); *Matter of V-K-*, 24 I&N Dec. 500 (BIA 2008).

In the present matter, the respondent seeks to establish his entitlement to withholding of removal under section 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3), based on the existence of a "pattern or practice" of persecution of Christians in Indonesia.[1] *See* (b) (6) *supra*; *see also* 8 C.F.R. § 1208.16(b)(2)(i) and (ii). The Board has previously examined this type of claim. *See Matter of A-M-*, 23 I&N Dec. 737, 741 (BIA 2005). Nevertheless, the (b) (6) has requested that we further clarify regarding how systemic, pervasive, or organized the persecution must be before it could be recognized as a pattern or practice. (b) (6) *supra*, at (b) (6) *Cf. Wakkary v. Holder*, 558 F.3d 1049 (9th Cir. 2009); *Ingmantoro v. Mukasey*, 550 F.3d 646 (7th Cir. 2008); *Sioe Tjen Wong v. Att'y Gen. of U.S.*, 539 F.3d 225 (3d Cir. 2008); *Kho v. Keisler*, 505 F.3d 50 (1st Cir. 2007). Both parties have requested that this case be remanded to permit further fact-finding in

[1] The respondent submitted an Application for Asylum and Withholding of Removal ("Form I-589") in October 2003. *See* Exh. 5. Since this application was filed before May 11, 2005, it is not governed by the provisions of the REAL ID Act. *See Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006).

this case. Given the age of the record, we agree that a remand is the appropriate course. Accordingly, the record will be remanded to the Immigration Court.

In the remanded proceedings, the parties should be afforded an opportunity to present evidence relevant to the respondent's application for withholding of removal, including testimony and updated country condition material, especially objective evidence such as the State Department country reports, international religious freedom reports, and issue papers. *See* (b) (6) *v. Mukasey*, *supra*, at (b) (6) requesting guidance in what indices should be considered in assessing these types of cases).

Based on these considerations, the following order will be entered.

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

FOR THE BOARD