File: (b) (6)

Date: SEP 28 2012

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Hilary Han, Esquire

ON BEHALF OF DHS: Eric Bakken
Senior Attorney

APPLICATION: Withholding of removal

This matter was last before the Board on June 8, 2009, when we remanded the record to the Immigration Judge. Our remand was based on a remand from the United States Court of Appeals for the (b) (6) *See* (b) (6) *v. Mukasey* (b) (6) The respondent presently appeals the order of removal to Ukraine and in the alternative, Russia. The respondent also moves for a remand to apply for withholding of removal from Russia. The appeal will be dismissed, and the motion granted.

We review for clear error the findings of fact, including the determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

We adopt and affirm the decision of the Immigration Judge. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994). For the reasons stated in the Immigration Judge's decision, we affirm his conclusion that the appropriate country for removal under section 241(b)(2)(E) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(2)(E), is Ukraine, and Russia in the alternative (I.J. at 2-11). We agree with the Immigration Judge's analysis of the statutory framework to conclude that the term "country" in the context of designating an alien's country of deportation means a state existing at the time of the deportation order. This interpretation of the term "country" comports with Congressional intent to establish a comprehensive list of potential countries of removal in order to ensure that removal orders are executed (I.J. at 6-9 (citing relevant case law for support)). The respondent's arguments on appeal do not persuade us otherwise. In addition, the respondent "concedes that the IJ had the power to order him removed to Russia . . . ." *See* Respondent's Brief at 19. Therefore, we affirm the Immigration Judge's decision.

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[1] The remaining procedural history of this matter is accurately summarized in the Immigration Judge's decision.

(b) (6)

The respondent moves for a remand to apply for withholding of removal from Russia. The DHS does not oppose the motion. Because the respondent was not aware that he would be ordered removed to Russia, we will remand to allow him an opportunity to have his withholding of removal application considered by the Immigration Judge.

Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is dismissed.

FURTHER ORDER: The respondent's motion is granted, and the record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion.

FOR THE BOARD

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

In the Matter of:

(b) (6)

Respondent.

File Number (b) (6)

IN REMOVAL PROCEEDINGS

CHARGE: INA § 237(a)(2)(E)(i)
INA § 237(a)(2)(A)(ii)
INA § 237(a)(2)(A)(iii)
INA § 237(a)(2)(A)(iii)

APPLICATION: Withholding of Removal

ON BEHALF OF RESPONDENT
Hilary Han
Dobrin & Han, PC
(b) (6)

ON BEHALF OF ICE
Robert Peck
Assistant Chief Counsel
(b) (6)

DECISION OF THE IMMIGRATION JUDGE

I. Introduction and Procedural History

This case continues before the court on remand from the Board of Immigration Appeals ("Board"). The case had previously been remanded by the (b) (6) (b) (6) *v. Mukasey* (b) (6) In its opinion, the circuit held that the Board's decision upholding the designation of Ukraine as an alternate country of removal was not supported by substantial evidence. The Board had affirmed Ukraine as a proper country of removal based on Respondent's testimony that he was a citizen of Ukraine, that he entered the country from Ukraine, and that he held a Ukrainian passport. The (b) (6) concluded that the Board's decision was not supported by substantial evidence because the record contained a copy of the passport that Respondent used to enter the United States, which was not issued by Ukraine but by the Soviet Union.

As noted by the Board in its remand, the passport referred to by the circuit was not submitted to the record until after the Immigration Judge had already issued her original decision. Accordingly, it was never entered into the record as evidence and has never been considered by the Immigration Court or the Board in any underlying decision of these proceedings. Considering this fact, the Board remanded the record to this court "for further fact finding and for the entry of a new decision regarding the appropriate country for removal under section 241(b)(2)(E) of the Act." *See* Decision of the Board (June 8, 2009) at 2.

Pursuant to the Board's remand, the court issued a preliminary decision holding that additional fact finding was necessary in order for the court to properly evaluate the designation of Respondent's country of removal. *See* Decision of the Immigration Judge (November 2, 2009). That decision is incorporated by reference herein. Finding that the Soviet passport was new evidence subject to further inquiry, the court set a bar date for the filing of all supplemental documentary evidence and scheduled the case for an individual hearing.

II. Evidence on Remand

A. Summary of Documentary Evidence

On remand, the court has entered the following evidence into the record:

R-1: Black and white copy of Respondent's Soviet passport, with translation;

R-2: Color copy of Respondent's Soviet passport.

The passport reflects the state emblem of the Union of Soviet Socialist Republics ("U.S.S.R." or "Soviet Union"). Exhibit R-1 at 2. Page three of the passport notes that the "bearer of this document is a citizen of the Union of Soviet Socialist Republics." *Id.* Respondent's place of birth is indicated as "Sukhumi." *Id.* The passport was scheduled to expire on June 27, 1996. A stamp inside the passport authorizes Respondent's exit before December 17, 1991 to the United States for permanent residence. *Id.* Page 16 of the passport contains an entry stamp from the United States marking admission on July 5, 1991. *Id.* at 11.

The Government did not object to the admission of this evidence into the record.

B. Summary of Testimonial Evidence

The court took oral testimony from Respondent and his wife, (b) (6) at an individual hearing on February 24, 2010.

1. Respondent

Respondent testified that he was born in the Soviet Union in an area that is now part of the country of Georgia. His father was born in the Soviet Union, in an area that is now part of Ukraine. His mother was also born in the Soviet Union, although it is unclear whether she was born in an area presently considered to be Russia or Ukraine. She is now a U.S. citizen. Respondent attended school in a city located in present-day Ukraine. He continued to live in present-day Ukraine when he reported for military service with the Soviet Union, and again when he returned from military service. Prior to his admission to the United States, he worked as a machinist in present-day Ukraine.

Respondent arrived in the United States on July 5, 1991. He was admitted to this country as a refugee based on his brother's petition. His brother had previously been granted refugee status and was already living in the United States. Respondent testified that he traveled to the United States on his Soviet passport. He explained that he obtained the passport from a government passport center in the Soviet Union, in a city located in present-day Ukraine. At that time, he was required to forfeit his internal passport, which permitted travel within the Soviet Union, in order to receive a passport that would permit international travel. Respondent confirmed that the passport indicates that its bearer is a citizen of the Soviet Union. He explained that the passport was valid for five years. He would lose his ability to use it after the expiration of the five year period and would be required to submit a new passport application. Respondent initiated the process to obtain the Soviet passport after receiving paperwork from the United States relating to his refugee application. The last packet of paperwork received from the United States contained air travel tickets from Moscow to Portland, Oregon via New York, New York.

Respondent states that upon arriving in New York, he presented his Soviet passport along with his admissions paperwork to the immigration officers. The officers gave him and his wife white cards. Respondent testified that the refugee organization who assisted their resettlement told him that he no longer needed his Soviet passport. He explained that, unbeknownst to him, his wife saved the passport in a box. He states that he originally testified that he did not have a passport because he did not know that he still had the Soviet passport in his possession. He learned that his wife had saved the passport during his removal proceedings when he asked his wife.

Respondent confirmed that the passport that was entered into the evidentiary record on remand is the passport that he used to enter the United States. He testified that the passport has been in only his or his wife's possession, or in the possession of his attorney, since the time of the last removal hearing. Respondent confirmed that the passport was issued by the Soviet Union. He explained that he had previously testified that he entered on a Ukranian passport because he had been living in the territory of Ukraine in the Soviet Union and did not realize the significance of the distinction. He noted that the Ukraine did

not become a separate country independent from the Soviet Union until after he entered the United States.

2. Respondent's Wife

The testimony of Ms. (b) (6) was consistent with Respondent's testimony. She explained that she and Respondent lived with their children in the territory of Ukraine, which was a republic of the Soviet Union, prior to their admission to the United States. She stated that the family received notice from the U.S. embassy in Moscow that they had been granted refugee status. Respondent subsequently completed the required paperwork and eventually received a package from the United States containing the family's air travel tickets and admissions paperwork. She explained that they had three days to pack their belongings and obtain passports. She and Respondent went to a passport office, which was related to the KGB because the office was only for persons seeking documents to immigrate to other countries. They paid a fee for expedited processing, had photographs taken, and received their passports. She confirmed that the passport entered into the record was Respondent's and noted that her passport is materially identical to his. When the family arrived in the United States, they received white cards. She was told that they no longer needed their Soviet passports, but she decided to keep them as mementos.

III. Discussion

The Immigration and Nationality Act ("INA" or "Act") commands the procedures for designating an alien's country of removal. *Jama v. INS*, 543 U.S. 335, 341 (2005). The statutory framework involves a four-stage inquiry premised upon the provisions of INA § 241(b)(2):

> (1) An alien shall be removed to the country of his choice . . ., unless one of the conditions eliminating that command is satisfied; (2) otherwise he shall be removed to the country of which he is a citizen . . ., unless one of the conditions eliminating that command is satisfied; (3) otherwise he shall be removed to one of the countries with which he has a lesser connection (clauses (i) to (vi) of subparagraph (E); or (4) if that is 'impracticable, inadvisable, or impossible,' he shall be removed to 'another country whose government will accept the alien into the country'. . . .

Id.; see also Hadera v. Gonzales, 494 F.3d 1154, 1157 (9th Cir. 2007). Here, Respondent declined to designate a country of removal. As a citizen born in the now-defunct Soviet Union who did not obtain citizenship from any of the independent former Soviet nations, or any other nation, he is also stateless. As a result, no country designation may be made under the first two steps. INA § 241(b)(2)(A) & (D); *Hadera*, 494 F.3d at 1157 (where an alien is stateless, the country cannot be designated under step two).

The court therefore proceeds to the third step to determine the proper country for removal under section 241(b)(2)(E). This section provides:

> If an alien is not removed to [the country of his or her choice or citizenship], the attorney general shall remove the alien to any of the following countries:
>
> (i) The country from which the alien was admitted to the United States.
>
> (ii) The country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States.
>
> (iii) A country in which the alien resided before the alien entered the country from which the alien entered the United States.
>
> (iv) The country in which the alien was born.
>
> (v) The country that had sovereignty over the alien's birthplace when the alien was born.
>
> (vi) The country in which the alien's birthplace is located when the alien is ordered removed.

INA § 241(b)(2)(E).

The evidence of record establishes that Respondent was a citizen of the Soviet Union. He was born in the Soviet Union in an area in present-day Georgia. He left Georgia as a child and permanently resided in an area located in present-day Ukraine. However, Respondent is not a citizen of Ukraine, nor was he ever a citizen of Ukraine, because he does not qualify under The Law of Ukraine On Citizenship of Ukraine. *See* Exhibit 9 at Art. 3 (Ukrainian citizens include citizens of the former Soviet Union who were permanently residing in the territory of Ukraine when independence was declared on August 24, 1991 and persons residing in Ukraine at the moment the Ukrainian citizenship law came into force on November 13, 1991 who were not citizens of other states, among others). Respondent had been admitted to the United States as a refugee seven weeks before Ukraine declared its independence and four months before the Ukrainian citizenship law took effect. His passport and testimony confirm his Soviet citizenship.

Whether Ukraine remains a proper country of removal despite Respondent's non-citizenship depends on the interpretation of the term "country" in section 241(b)(2)(E). The law is clear that the term "country" has means, "at a minimum, . . . a foreign place with 'territory' in a geographical sense and a 'government' in the sense of a political

organization that exercised power on behalf of the people subjected to its jurisdiction." *Matter of Linnus*, 19 I&N Dec. 302, 307 (BIS 1985). The crux of the dispute at bar involves the time period in which the term "country" should be viewed for purposes of § 241(b)(2)(E). The parties primarily frame their arguments with respect to clause (i), as that was the clause under which Ukraine was designated in the underlying proceedings. Respondent asserts that the term refers to a political entity with geographical bounds at the time the alien was admitted to the United States. The Government asserts that the term means the state existing at the time of the aliens' removal which contains the geographical area from which the alien was admitted. The court considers these arguments in reviewing the overall scheme of clause (i) through (vi), but does not limit its current analysis to clause (i) as the scope of review is now de novo with the consideration of post-remand evidence.

The Act does not define the term "country." In its remand of this case, the circuit acknowledged that the term has been interpreted by courts examining prior versions of the Act as well as other statutes, but nonetheless expressed its reluctance "to assume that what 'country' meant in the context of other statutes is readily applicable to the current statutory scheme." (b) (6) Accordingly, the court does not rely on interpretations of the term "country" applied in other statutes. *See e.g. Bajalieh v. Beechie*, 309 F.2d 386, 389 (9th Cir. 1962) (interpreting the Refugee Relief Act of 1953). However, the court believes that the meaning applied to the term "country" in prior versions of the Immigration and Nationality Act is relevant to the interpretation of that term today. *See e.g. Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change . . . . So too, where, as here, Congress adopts a new law incorporating sections of a prior law, Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute") (internal citations omitted). Accordingly, the court begins by reviewing the history of this provision and those cases addressing the term "country" in prior versions of the Act.

Section 20 of the Immigration Act of 1917, 39 stat. 874, c. 29, provided that:

> the deportation of aliens provided for in this Act shall, at the option of the Secretary of Labor, be to the country whence they came or to the foreign port at which such aliens embarked for the United States; or, if such embarkation was for foreign contiguous territory, to the foreign port at which they embarked for such territory; or, if such aliens entered foreign contiguous from the United States and later entered the United States, or if such aliens are held by the country from which they entered the United States not to be subjects or citizens of such country, and such country refuses to permit their reentry, or imposes any condition upon permitting reentry, then to the country of which such aliens are subjects or citizens, or to the country in

> which they resided prior to entering the country from which they entered the United States.

The Supreme Court has expressly held that the term "country" was used in this section "to designate, in general terms, the state which at the time of deportation, includes the place from which the alien came." *U.S. el rel. Mensevich v. Tod*, 264 U.S. 134, 136 (1924). There, the alien had resided in the province of Grodno, which was a part of Russia, at the time he immigrated to the United States. At the time of his deportation, however, the province of Grodno was within the legal borders of Poland. The Court upheld the alien's deportation to Poland because that was the country, at the time of the alien's deportation, that included the place from which the alien had come. Pursuant to this interpretation, the Ninth Circuit upheld the deportation of an alien to Poland where the alien was born in a territory of Austria that had been annexed to Poland by the time of the alien's deportation proceedings. *Seif v. Nagle*, 14 F.2d 416 (9th Cir. 1926). *See also U.S. ex rel. Mastoras v. McCandless*, 61 F.2d 366 (3rd Cir. 1932) (upholding deportation to Albania where the territory of Albania was within the Kingdom of Greece at the time of Respondent's arrival in the United States but had become an independent country by the time of the alien's deportation). These cases clearly reflect that the courts interpreted the term "country" in the context of designating an alien's country of deportation to mean a state as existing at the time of the deportation order.

Congress amended section 20 of the Immigration Act of 1917 in 1950.[1] The amendment significantly altered the general scheme for designating a country of removal. The section was amended to read:

> the deportation of aliens provided for in this Act and all other immigration laws of the United states shall be directed by the Attorney General to the country specified by the alien, if it is willing to accept him into its territory; otherwise such deportation shall be directed by the Attorney General within his discretion and without priority of preference because of their order as herein set forth, either to the country from which such alien last entered the United States; or to the country in which is located the foreign port at which such alien embarked for the United States or for foreign contiguous territory; or to any country in which he resided prior to entering the country from

[1] In 1943, Congress amended section 20 of the Immigration Act of 1917 to provide a procedure for designating a country of deportation where deportation to the country normally designated under the section is "impractical or inconvenient" because of enemy occupation of the country during a time that the United States is at war. 57 Stat. 553, ch. 230 (July 13, 2943). The Board has referred to this language as the "government-in-exile" provision. *Matter of Linnas*, 19 I&N Dec. 302, 305 (BIA 1985). Notwithstanding this additional provision, the language of the statute regarding the general country designation scheme remained intact.

> which he entered the United States; or to the country which had sovereignty over the birthplace of the alien at the time of his birth; or to any country of which the alien is a subject, national, or citizen; or to the country in which he was born; or to the country in which the place of his birth is situated at the time he is ordered deported; or, if deportation to any of the said foregoing places or countries is impracticable, inadvisable, or impossible, then to any country which is willing to accept such alien into its territory.

64 stat. 110, c. 1024, sec. 23 (Sep. 25, 1950). This amendment is substantially identical to the country designation scheme in the current Act. It institutes all of the same grounds upon which a country may be designated as the current Act, differing primarily in the order of priority in which the Attorney General must proceed through the analysis. The amendment was substantially codified in the modern Immigration and Nationality Act under former section 243(a), 8 U.S.C. § 1253(a). As part of the creation of a unified "removal" process, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. 104-208, 110 Stat. 3009 (Sep. 30, 1996), re-codified the section but retained the material content.

It is apparent from these amendments that the substantive grounds for determining an alien's country of removal have remained materially consistent since 1950. Moreover, these amendments reflect no express overall rejection of the previous interpretation that a country should be contemplated in terms of the state in existence at the time of deportation. The court presumes that Congress was aware that the term was interpreted to mean "the state which at the time of deportation, includes the place from which the alien came" when it passed these amendments. *Lorillard, supra* ("Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute"). Accordingly, the court can presume that Congress intended the term "country" in the current statute to also mean the state *which at the time of deportation*, includes the place from which the alien came, except as specifically provided otherwise.

A review of relevant Board and circuit cases confirms this conclusion. Several cases issued prior to the 1950 amendment consider the meaning of the term "country whence they came." These cases concluded that "country whence they came" means the place of the alien's nativity or post-nativity domicile. *U.S. ex rel. Boraca v. Schlotfeldt*, 109 F.2d 106 (7th Cir. 1940) ("Ordinarily, deportation is to the country of birth, and usually the words 'country whence they came' mean the country of nativity. However, where the record indicates that domicile had been acquired elsewhere, the words 'country when they came' does not necessarily mean the country of birth"); *U.S. ex rel. Di Paola v. Reimer*, 102 F.2d 40 (2nd Cir. 1939) ("'the country whence they came' . . . has generally been held to mean the country of the alien's nativity, if it does not appear that he has acquired a domicil elsewhere"); *Lewis v. Frick*, 233 U.S. 291, 304 (1911) (respondent was ordered deported to

"the land of his nativity, that being in fact 'the country whence he came' when he first entered the United States") (preceding the Immigration Act of 1917). In *U.S. ex rel. Karamian v. Curran*, 16 F.2d 958 (2nd Cir. 1927), the circuit explained that "[t]he exact meaning of coming from a country [in interpreting 'country whence he came'] . . . cannot in our judgment be stated in general and accurate terms. The meaning of the phrase will depend on circumstances" (upholding France as the country of deportation where alien was a citizen of Persia but had lived in France long enough to be domiciled before entering the United States).

In addition to knowing that courts have contemplated "country from whence they came" in terms of the state at the time of deportation, Congress is also presumed to have been aware that courts considered the phrase to refer, in part, to the place of the alien's birth. It therefore makes sense that Congress eliminated the phrase "country from whence they came" in the 1950 amendment and added several grounds specifically related to the place of the alien's birth and the time frame to be considered: the country of deportation could now be designated as the country which had sovereignty over the birthplace of the alien at the time of his birth; the country in which the alien was born; and the country in which the place of the alien's birth is situated at the time he is ordered deported. In delineating these bases, Congress would have known that the geo-political circumstances of World Wars I and II reshaped the boundaries of many countries, which posed significant challenges to determining the proper country of deportation. It was not uncommon for the alien's place of birth, or former residence, or other such connection, to exist at the time of deportation as a different state entity from the time of the alien's arrival. *See e.g. Caranica v. Nagle*, 28 F.2d 955 (9th Cir. 1928) (upholding deportation to Greece where alien was born in Macedonia, which was a Turkish province at the time of his birth, but which had become Greece by the time of his deportation order).

Courts have recognized that the country designation provision reflects the "general Congressional policy of facilitating the deportation of deportable aliens." *Chan Chuen v. Esperdy*, 285 F.2d 353 (2nd Cir. 1960). In line with this goal, the increasingly specific grounds for designating a country "is obviously intended to avoid arbitrary restrictions on the places to which a deportable alien may be sent." *Id.; see also Matter of Chow*, 10 I. & N. Dec. 469, 471 (BIA 1964) ("The wide discretion given the Attorney General [under the section] is obviously intended to avoid arbitrary restrictions on the places to which a deportable alien may be sent"). Courts have thereby interpreted the increasingly specific grounds for designation in this section as reflecting Congressional intent to expressly cover as many bases as it could reasonably conceive in order to ensure the deportation of an alien to *some* country.

With these considerations in mind, the court turns to an examination of each clause in section 241(b)(2)(E) to determine the proper designation of Respondent's country of removal.

(b) (6)

Clause (i) relates to the country from which the alien was admitted to the United States. If the term "country" is considered to be the geo-political entity that existed at the time of Respondent's admission, the country designated must be the Soviet Union. As such country no longer exists, the court could not designate a country under this clause. If, however, the term "country" is considered to be the state entity that exists at the time of Respondent's deportation, the country designated must be Russia, as he departed from Moscow, which is currently located in Russia. There is no reason to believe that Congress intended to reject the prior interpretation that the country be considered the state entity *at the time of deportation* with respect to this ground. Accordingly, the court finds that Respondent's removal may be directed to Russia.

Clause (ii) relates to the country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States. For the same reasons as above, the court may designate Russia, as he departed from the Moscow airport and there is no evidence that he stopped in another country before being admitted to the United States. His removal may therefore be directed to Russia under this clause.

Clause (iii) relates to the country in which the alien resided before the alien entered the country from which the alien entered the United States. Again, because the Soviet Union no longer exists, the court may not designate a country under this clause if the "country" is interpreted to be the entity that existed at the time that Respondent entered the United States. However, the court believes that "country" in this clause must again be interpreted to mean the country in existence at the time of deportation. Nothing in the amendments by Congress suggests otherwise. Because Respondent resided for the majority of his life in Ukraine prior to entering the United States, his removal may be directed to Ukraine under this provision of the Act.

Clause (iv) relates to the country in which the alien was born. This clause poses the same problems as the clauses above, as Respondent was born in a country that no longer exists. Given that Congress expressly refers to the place of the alien's birth in three separate clauses, each of which manifest a different time frame, the court finds that this clause refers to the country that constitutes the state entity at the time of Respondent's birth. In this case, that country is the Soviet Union. Because the Soviet Union no longer exists, the court may not designate Respondent's country of removal under this section.

Clause (v) relates to the country that had sovereignty over the alien's birthplace when the alien was born. As discussed above, the Soviet Union had sovereignty over Respondent's birthplace when he was born. As with clause (iii), because the Soviet Union no longer exists, the court may not designate Respondent's country of removal under this section.

(b) (6)

Clause (vi) relates to the country in which the alien's birthplace is located when the alien is ordered removed. This clause is unambiguous. Respondent was born in a location that is now part of Georgia. Accordingly, his removal may be directed under this clause to Georgia. However, because the court has granted withholding of removal to Georgia, he shall not actually be removed to such country.

As noted by the Supreme Court in *Jama, supra,* if designation under any of these clauses is 'impracticable, inadvisable, or impossible,' Respondent shall be removed to 'another country whose government will accept the alien into the country.' Because Respondent has extensive ties to the area that is now present-day Ukraine, Respondent's removal is otherwise directed to Ukraine under this provision. *See e.g. United States v. Murff*, 253 F.2d 941 (2nd Cir. 1958) ("We think that the statute manifests an intention, when an alien is excluded, that the situation existing before the arrival of the alien in this country be restored so far as is possible") (interpreting the phrase "from whence he came" in the parallel exclusion statute).

Respondent was granted withholding of removal to Georgia based on his fear of future persecution in that country. He did not claim past persecution. However, the court notes that, had Respondent's claim been based on past persecution, it would be ironic indeed to grant withholding of removal to a country that did not exist at the time of the persecution but be precluded from entering an alternate order of removal to a different country because such country did not exist at the time of Respondent's departure.

For the foregoing reasons, the court orders Respondent removed to Ukraine, with an alternate order of removal to Russia.

ORDER

It is **HEREBY ORDERED** that Respondent be **REMOVED** to Ukraine with an alternate order of removal to Russia.

07/16/2010
Date

Edward R. Kandler
Immigration Judge

(b) (6)

File: (b) (6) Date:

In re: (b) (6) JUN 0 8 2009

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Hilary Han, Esquire

ON BEHALF OF DHS: Robert F. Peck
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(E)(i), I&N Act [8 U.S.C. § 1227(a)(2)(E)(i)] - Convicted of crime of domestic violence, stalking, or child abuse, neglect, or abandonment

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 101(a)(43)(B))

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

Lodged: 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 101(a)(43)(G))

Lodged: 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 101(a)(43)(F))

APPLICATION: Withholding of removal

This case was last before us on August 8, 2006, when we upheld the Immigration Judge's alternative order of removal to the Ukraine pursuant to section 241(b)(2)(E)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(2)(E)(i). The respondent appealed the Board's decision to the United States Court of Appeals for the (b) (6) On (b) (6) the (b) (6) issued an order remanding the case to allow the Board to determine in the first instance whether pre-independent Ukraine qualifies as a "country" in the removal context. (b) (6) *v. Mukasey*, (b) (6) (b) (6) The record will be remanded for further proceedings.

The Immigration Judge granted the respondent withholding of removal to Georgia but ordered him removed to the Ukraine on the charges contained in the notice to appear (April 4, 2005, Decision of the Immigration Judge). In our decision of August 8, 2006, we dismissed the respondent's appeal

of the order of removal, concluding that under section 241(b)(2)(E)(i) of the Act, the respondent can be ordered removed to the Ukraine because he was admitted to the United States from the Ukraine and stated that he had a Ukrainian passport. The (b) (6) found that the record reflects that the respondent entered the United States with a passport issued by the Soviet Union and that the Board failed to address the novel legal question of whether the Ukraine qualifies as a "country" as the term is used in the Immigration and Nationality Act.

On remand, the Department of Homeland Security (DHS) points out that the Soviet passport referenced by the (b) (6) is an untranslated copy and was never admitted into evidence. In fact, the record reflects that the respondent submitted a copy of the untranslated and unauthenticated passport to the Immigration Court on October 20, 2003, which was the same date that the initial Immigration Judge issued her written decision. In a handwritten notation on the respondent's submission, the Immigration Judge noted that her decision had already been issued. Thus, the copy of the Soviet passport was never marked into evidence or considered by the Immigration Judge or the Board. Further, because the copy is untranslated, it is difficult to discern from which port the respondent departed and on which date he departed for the United States. As such, we find it appropriate to remand the record to the Immigration Judge for further fact finding and for the entry of a new decision regarding the appropriate country of removal under section 241(b)(2)(E) of the Act.

Accordingly, the following order is entered.

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

FOR THE BOARD