File: (b) (6) Date: DEC 20 2012

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Michael Friedberg, Esquire

ON BEHALF OF DHS: Shadee M. Star
Senior Attorney

CHARGE:

Notice: Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] - Inadmissible at time of entry or adjustment of status under section 212(a)(6)(E)(i), I&N Act [8 U.S.C. § 1182(a)(6)(E)i)] – Alien smuggler

Sec. 237(a)(1)(E)(i), I&N Act [8 U.S.C. § 1227(a)(1)(E)(i)] - Alien smuggler

APPLICATION: Waiver of inadmissibility

This case is presently before us pursuant to a decision of the United States Court of Appeals for the (b) (6) [1] (b) (6) *v. Holder* (b) (6) In its order, the (b) (6) determined that the Board erred in not permitting the respondent to withdraw his admission that he smuggled his brother into the United States. The court found that the respondent's former counsel provided ineffective assistance that prejudiced the respondent and thus that egregious circumstances warranted permitting the respondent to withdraw his previous admission. Moreover, the court noted that that the propriety of the respondent's admission was severely undermined by a subsequent legal development that could mean the admission was false. Specifically, the court's decision in *Altamirano v. Gonzales*, 427 F.3d 586 (9th Cir. 2005), which was issued subsequent to the Immigration Judge's decision, clarified what actions count as alien smuggling. *See also Aguilar Gonzalez v. Mukasey*, 534 F.3d 1204 (9th Cir. 2008) (discussing actions which may and may not constitute an affirmative act to support smuggling).

In the absence of an admission and in light of a subsequent legal development clarifying what actions constitute alien smuggling, the court remanded the record to the Board for further consideration of whether the Department of Homeland Security has established that the respondent is removable for smuggling his brother into the United States.[2] Given our limited

[1] The parties have filed supplemental briefs.

[2] As the court noted, the respondent does not contest that he is removable for having smuggled his wife into the United States.

fact-finding authority, we will remand the record to the Immigration Judge for additional fact finding with respect to the incident with the respondent's brother. *See* 8 C.F.R. § 1003.1(d)(3)(iv).

If the Immigration Judge concludes that the respondent is not removable for having smuggled his brother into the United States, the respondent may be eligible to apply for a waiver of inadmissibility pursuant to section 212(d)(11) of the Immigration and Nationality Act, 8 U.S.C. § 1182(d)(11), by which he may waive the ground of inadmissibility related to having smuggled his wife into the United States.

The parties may update the evidentiary record on remand.

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.

Ellen Rebowitz
FOR THE BOARD