IMMIGRATION COURT

(b) (6)

In the Matter of

Case No.: (b) (6)

(b) (6)

Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Jun 10, 2005. This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[ ] The respondent was ordered removed from the United States to or in the alternative to

[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to or in the alternative to

[ ] Respondent's application for voluntary departure was granted until upon posting a bond in the amount of $ _____ with an alternate order of removal to

Respondent's application for:

[X] Asylum was (X) granted ( ) ~~denied~~ ( ) ~~withdrawn~~

[X] Withholding of removal was ( ) ~~granted~~ ( ) ~~denied~~ (X) withdrawn

[ ] A Waiver under Section _____ was ( ) granted ( ) denied ( ) withdrawn

[ ] Cancellation under Section 240A(a) was ( )granted ( )denied ( )withdrawn

Respondent's application for:

[ ] Cancellation under Section 240A(b)(1) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Cancellation under Section 240A(b)(2) was ( ) granted ( ) denied ( ) withdrawn, If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Adjustment of Status under section _____ was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[X] Respondent's application of (X) witholding of removal ( ) ~~deferral of removal~~ under Article III of the Convention Against Torture was ( ) ~~granted~~ ( ) ~~denied~~ (X) withdrawn.

[ ] Respondent's status was rescinded under section 246.

[ ] Respondent is admitted to the United States as a _____ until _____.

[ ] As a condition of admission, respondent is to post a $ _____ bond.

[ ] Respondent knowingly filed a frivolous asylum application after proper notice.

[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

[ ] Proceedings were terminated.

[ ] Other: _____

Date: Jun 10, 2005

W. J. Martin

WILLIAM J. MARTIN
Immigration Judge

DM6

File: (b) (6) Date:

In re: (b) (6)

FEB 25 2005

IN REMOVAL PROCEEDINGS

APPEAL

RECEIVED
DEPARTMENT OF JUSTICE

MAR 4 2005

EXECUTIVE OFFICE
IMMIGRATION REVIEW
IMMIGRATION COURT
SAN FRANCISCO, CALIFORNIA

ON BEHALF OF RESPONDENT: Hardeep S. Rai, Esquire

ON BEHALF OF DHS: Eileen R. Trujillo
Assistant District Counsel

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

ORDER:

PER CURIAM. This case was last before us on June 28, 2002, when we dismissed the respondent's appeal from an Immigration Judge's decision denying her application for asylum and withholding of removal, and denied her motion to remand to seek protection under the Convention Against Torture. The Immigration Judge's decision was based on his finding that the respondent did not testify credibly regarding her asylum claim. On (b) (6) the United States Court of Appeals for the (b) (6) reversed the Immigration Judge's adverse credibility finding and remanded the case to the Board for further proceedings.

Taking the respondent's testimony as credible, as the (b) (6) decision requires us to do, we find that the respondent, who was raped in 1995 while in police custody, suffered past persecution. *See, e.g., Guo v. Ashcroft*, 361 F.3d 1194 (9th Cir. 2004); *Duarte de Guinac v. INS*, 179 F.3d 1156 (9th Cir. 1999), and cases cited therein. We further find that the persecution was inflicted on account of a political opinion imputed to her. The respondent testified that the police arrested her after they came to her house looking for her father, whom they accused of providing assistance to Sikh militants.

In light of the court's finding that the respondent testified credibly regarding her asylum claim, and our findings that she suffered past persecution on account of a protected ground, we find that a remand is necessary. On remand, both parties will have the opportunity to present and develop evidence regarding current country conditions in India, and how those conditions might affect this respondent's application for asylum. *See Lopez v. Ashcroft*, 366 F.3d 799 (9th Cir. 2004). We note that as past persecution has been shown, the burden of proof now shifts to the Department of Homeland Security to rebut the presumption of future persecution. 8 C.F.R. § 1208.13(b)(1)(ii).

(b) (6)

Accordingly, the decision of the Board in this case dated June 28, 2002, is vacated, and the record is remanded to the Immigration Judge for further proceedings consistent with this decision and the decision of the court.

FOR THE BOARD