U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6) [redacted]

Date: OCT 13 2006

In re: (b) (6) [redacted]

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Kahn, Robert E., Esquire

RECEIVED
US DEPARTMENT OF JUSTICE
2007 FEB 14 PM 12: 58
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
HOUSTON, TEXAS

ORDER:

PER CURIAM. This case was last before us on July 20, 2006, when this Board dismissed the respondent's appeal from an Immigration Judge's decision. The respondent has now filed a motion to reopen. The motion will be denied.

Pursuant to section 240B(d) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(d), an alien who fails to depart following a grant of voluntary departure, and who has been provided written notice of the consequences of remaining in the United States, is statutorily barred from applying for certain forms of discretionary relief. We find that the respondent is barred from applying for adjustment of status by section 240B(d) of the Act. An alien who remains in the United States after the scheduled date of departure is statutorily ineligible for discretionary relief. Therefore, because the respondent has remained in the United States after the scheduled date of departure, the respondent is now statutorily ineligible for the relief sought. [1] Accordingly, the motion to reopen is denied.

Anthony C. Uspeato

FOR THE BOARD

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[1] The United States Court of Appeals for the (b)(6) [redacted] (b)(6) [redacted] in *Banda-Ortiz v. Gonzales*, 445 F.3d 387, 391 (5th Cir. 2006), *reh'g and reh'g en banc denied*, 458 F.3d 367 (5th Cir. 2006), stated that it declined to read into section 240B(d) of the Act the requirement that the Board automatically toll an alien's voluntary departure period during the pendency of a motion to reopen.

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

Files: (b) (6) [redacted]

Date: JUL 2 0 2006

In re: (b) (6) [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Rossana Rolon Grau, Esquire

ON BEHALF OF DHS: Michael R. Leppala
Assistant Chief Counsel

RECEIVED
US DEPARTMENT OF JUSTICE
2007 FEB 14 PM 2:37
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
HOUSTON, TEXAS

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] -
In the United States in violation of law (both respondents)

APPLICATION: Asylum; withholding of removal; relief under the Convention Against Torture; cancellation of removal (A73 173 470)

By an order dated December 30, 2002, we affirmed without opinion an April 23, 2001, decision of an Immigration Judge finding the respondents removable as charged, and denying their application for asylum and withholding of removal under sections 208(a) and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(a) and 1231(b)(3), respectively. The respondents sought review of our order by the Court of Appeals for the (b)(6) [redacted] (the Court). By an order dated (b) (6) [redacted] the Court affirmed the Immigration Judge's finding that the respondents failed to demonstrate past persecution on account of a protected ground, but remanded the case to us for reconsideration the respondents' eligibility for asylum and withholding of removal based on their fear of future harm on account of a protected ground. The Court also directed us to consider the respondents' application for relief under the Convention Against Torture (CAT). On November 10, 2004, we remanded the matter to the Immigration Court for further proceedings consistent with the Court's decision. By an order dated July 29, 2005, an Immigration Judge denied the respondents' application for asylum, withholding of removal, and relief under the CAT. The Immigration Judge also denied the respondent wife's application for cancellation of removal under section 240A(b) of the Act, 8 U.S.C. § 1229b(b). The respondents again appealed. The appeal will be dismissed.

We adopt and affirm the July 29, 2005, decision of the Immigration Judge denying the respondents' applications for asylum, withholding of removal, and relief under the CAT.

See Matter of Burbano, 20 I&N Dec. 872, 874 (BIA 1994) (noting that adoption or affirmance of a decision of an Immigration Judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those which the Immigration Judge articulated in his or her decision"). For the reasons discussed by him, we agree with the Immigration Judge's conclusion that the respondents failed to demonstrate a well-founded fear of persecution based on a protected ground under the Act were they to return to their native Indonesia. *See* Immigration Judge's Decision at 9-14. Likewise, the respondents failed to establish that it is more likely than not that they would be persecuted or tortured upon return to Indonesia. *See* Immigration Judge's Decision at 14-17. Inasmuch as we are in agreement with the Immigration Judge's decision, we affirm his decision to deny asylum, withholding of removal, and relief under the CAT.

We note that the respondents contend on appeal that the Immigration Judge relied almost exclusively on official country reports and other materials issued by the United States Department of State in reaching a conclusion that they failed to demonstrate a well-founded fear of persecution in their native Indonesia. This, they contend, violated their due process rights. However, the respondents failed to identify with specificity consideration of what evidence of record, when considered together with the United States Department of State materials, would have changed the outcome of the case. Moreover, the Immigration Judge noted that the lead respondent's own testimony provided little objective evidence of problems for Christians in the respondents' hometowns (I.J. at 8). As such, the respondents failed to demonstrate that they suffered any prejudice. *See Matter of Santos*, 19 I&N Dec. 105 (BIA 1984).

With regard to the respondent wife's application for cancellation of removal, we find that the Immigration Judge's factual findings in this case were not clearly erroneous. *See* 8 C.F.R. § 1003.1(d)(3). Likewise, we agree with the Immigration Judge's conclusion that the respondent wife has not met her burden of demonstrating "exceptional and extremely unusual hardship" to her United States citizen child, born in (b) (6) if she must return to Indonesia. *See* section 240A(b)(1)(D) of the Act; *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002); *Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002); *Matter of Monreal*, 23 I&N Dec. 56, 62 (BIA 2001). The entirety of the evidence does not show that the respondent wife's removal from the United States would impose on her United States citizen child a hardship that is substantially different from, or beyond, that which would normally be expected from the removal of an alien with close family members in the United States. Therefore, for the reasons discussed by him, we agree with the Immigration Judge's conclusion that the respondent wife has failed to meet the "exceptional and extremely unusual hardship" burden. *Matter of Recinas, supra; Matter of Monreal, supra*. In view of the foregoing, the following orders shall be entered.

ORDER: The respondents' appeal is dismissed.

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, the respondents are permitted to voluntarily depart from the United States, without expense to the Government, within 60 days from the date of this order or any extension beyond that time as may be granted by the Department of Homeland Security (DHS). *See* section 240B(b) of the Act; 8 C.F.R. §§ 1240.26(c), (f).

NOTICE: If the respondents fail to depart the United States within the time period specified, or any extensions granted by the DHS, the respondents shall be subject to a civil penalty of not less than $1,000 and not more than $5,000, and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Act. *See* section 240B(d) of the Act.

FOR THE BOARD

IMMIGRATION COURT
(b) (6) [redacted]

In the Matter of

(b) (6) [redacted]

Respondent

Case No.: (b) (6) [redacted]

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Jul 29, 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

[X] Respondent's application for voluntary departure was granted until September 27, 2005 under §240B(b) of the Act upon posting a bond in the amount of $ 500 within 5 business days with an alternate order of removal to Indonesia, under § 237(a)(1)(B) of the Act

Respondent's application for:

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

[X] Withholding of removal was ( )granted (X) denied ( ) 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 (X) denied ( ) 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.

[X] 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: Jul 29, 2005

William K. Zimmer

WILLIAM K. ZIMMER
Immigration Judge

Respondent reserved appeal.
Government waived appeal.
Notice of appeal is due on or before August 29, 2005

BEN

IMMIGRATION COURT
(b) (6) [redacted]

In the Matter of

(b) (6) [redacted]

Respondent

Case No.: (b) (6) [redacted]

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

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[X] Respondent's application for voluntary departure was granted until September 27, 2005 upon posting a bond in the amount of $ 500 within 5 business days, with an alternate order of removal to Indonesia, under §240B(b) of the Act under §237(a)(1)(B) of the Act.

Respondent's application for:

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

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

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

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

Respondent's application for:

[X] Cancellation under Section 240A(b)(1) was ( ) granted (X) 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.

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[X] 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: Jul 29, 2005

William K. Zimmer

WILLIAM K. ZIMMER
Immigration Judge

Respondent reserved appeal.
Government waived appeal.
Notice of appeal is due on or before August 29, 2005

BEN

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

Files: (b) (6) [redacted]

Date: NOV 10 2004

In re: (b) (6) [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Martha E. Garza, Esquire

ON BEHALF OF DHS: Cara Wilkins
Assistant District Counsel

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] -
In the United States in violation of law (both respondents)

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

ORDER:

PER CURIAM. Pursuant to the (b) (6) [redacted] decision of the United States Court of Appeals for the (b)(6) [redacted] the record is remanded to the Immigration Judge for a further hearing consistent with the court's decision.

FOR THE BOARD