UNITED STATES IMMIGRATION COURT
(b) (6)

IN THE REMOVAL CASE OF
(b) (6)
RESPONDENT

CASE NO.: (b) (6)

ORDERS

[PM] This is a memorandum of the Court's Decision and Orders entered on January 12, 2010. This memorandum is solely for the convenience of the parties. The oral or written Findings, Decision and Orders is the official opinion in this case. (✓) Both parties waived issuance of a formal oral decision in the case.

[ ] The respondent was ordered REMOVED from the United States to _____ ( ) in absentia.

[ ] Respondent's application for VOLUNTARY DEPARTURE was DENIED and respondent was ordered removed to _____, in the alternative to _____.

[ ] Respondent's application for VOLUNTARY DEPARTURE was GRANTED until _____, upon posting a voluntary departure bond in the amount of $_____ to DHS within five business days from the date of this Order, with an alternate Order of removal to _____ or _____. Respondent shall present to DHS within ( ) thirty days ( ) sixty days from the date of this Order, all necessary travel documents for voluntary departure.

[ ] Respondent's application for ASYLUM was ( ) granted ( ) denied ( ) withdrawn with prejudice.
( ) subject to the ANNUAL CAP under the INA section 207(a)(5).
( ) Respondent knowingly filed a FRIVOLOUS asylum application.

[ ] Respondent's application for WITHHOLDING of removal under INA section 241(b)(3) was ( ) granted ( ) denied ( ) withdrawn with prejudice.

[ ] Respondent's application for WITHHOLDING of removal under the Torture Convention was ( ) granted ( ) denied ( ) withdrawn with prejudice.

[ ] Respondent's application for DEFERRAL of removal under the Torture Convention was ( ) granted ( ) denied ( ) withdrawn with prejudice.

[ ] Respondent's application for CANCELLATION of removal under section ( ) 203(b) of NACARA, ( ) 240A(a) ( ) 240A(b)(1) ( ) 240A(b)(2) of the INA, was ( ) granted ( ) denied ( ) withdrawn with prejudice. If granted, it was ordered that the DHS issue all appropriate documents necessary to give effect to this Order. Respondent ( ) is ( ) is not subject to the ANNUAL CAP under INA section 240A(e).

[ ] Respondent's application for a WAIVER under the INA section _____ was ( ) granted ( ) denied ( ) withdrawn or ( ) other _____. ( ) The conditions imposed by INA section 216 on the repondent's permanent resident status were removed.

[PM] Respondent's application for ADJUSTMENT of status under section 245(a) of the (✓) INA ( ) NACARA ( ) _____ was (✓) granted ( ) denied ( ) withdrawn with prejudice. If granted, it was ordered that DHS issue all appropriate documents necessary to give effect to this Order.

CASE NUMBER: (b) (6) [redacted] RESPONDENT: (b) (6) [redacted]

[ ] Respondent's status was RESCINDED pursuant to the INA section 246.
[ ] Respondent's motion to WITHDRAW his application for admission was ( ) granted ( ) denied. If the respondent fails to abide by any of the conditions directed by the district director of DHS, then the alternate Order of removal shall become immediately effective without further notice or proceedings: the respondent shall be removed from the United States to _____.
[ ] Respondent was ADMITTED as a _____ until _____. As a condition of admission, the respondent was ordered to post a $ _____ bond.
[ ] Case was ( ) TERMINATED ( ) with ( ) without prejudice ( ) ADMINISTRATIVELY CLOSED.
[ ] Respondent was orally advised of the LIMITATION on discretionary relief and consequences for failure to depart as ordered.
[ ] If you fail to voluntarily depart when and as required, you shall be subject to civil money penalty of at least $1,000, but not more than $5,000, and be ineligible for a period of 10 years for any further relief under INA sections 240A, 240B, 245, and 248 (INA Section 240B(d)).
[ ] If you are under a final order of removal, and if you willfully fail or refuse to 1) depart when and as required, 2) make timely application in good faith for any documents necessary for departure, or 3) present yourself for removal at the time and place required, or, if you conspire to or take any action designed to prevent or hamper your departure, you shall be subject to civil money penalty of up to $500 for each day under such violation. (INA section 274D(a)). If you are removable pursuant to INA 237(a), then you shall further be fined and/or imprisoned for up to 10 years. (INA section 243(a)(1)).
[ ] Other:

Date: Jan 12, 2010

PHILIP S. LAW, Judge

APPEAL: (✓) waived ( ) reserved by ( ) Respondent ( ) DHS (✓) Both

DUE BY:

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: [ ] MAIL [✓] PERSONAL SERVICE
TO: [ ] DHS [ ] ALIEN [✓] Alien's ATT/REP [ ] ALIEN c/o Custodial Officer
DATE: January 12, 2010 BY: [ ] COURT STAFF [✓] JUDGE

Y2

File: (b) (6) Date: JAN - 5 2009

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Raed Gonzalez, Esquire

RECEIVED
US DEPARTMENT OF JUSTICE
2009 JAN 16 PM 2:46
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
IMMIGRATION COURT
HOUSTON, TEXAS

APPLICATION: Withholding of removal; adjustment of status

The respondent is a female native and citizen of the People's Republic of China whose case was last before us on August 22, 2005, when we dismissed her appeal of an Immigration Judge's order of removal, following a (b) (6) remand order from the United States Court of Appeals for the (b)(6) *v. Ashcroft*, (b) (6) The respondent filed a petition for review of our decision with the (b) (6) In an order dated (b) (6) the (b) (6) granted the respondent's petition and ordered the Board to grant the respondent withholding of removal under section 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3). *See* (b) (6) *v. Gonzales*, (b) (6) Subsequently, the respondent filed a motion to remand through which she seeks to apply for adjustment of status based upon her marriage to a United States citizen who has filed a visa petition on her behalf. The Department of Homeland Security (DHS) has filed no response to the motion. The motion to remand will be granted in order to allow the respondent to establish eligibility for adjustment of status and for the Immigration Judge to grant the respondent withholding of removal, if needed, following the respondent's hearing on her adjustment of status application.

Accordingly, the following orders shall be entered:

ORDER: The Board's August 22, 2005, decision is vacated.

FURTHER ORDER: The motion to remand is granted.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings and the entry of a new decision.

FOR THE BOARD

File: (b) (6) [redacted]

Date: AUG 22 2005

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

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Brian K. Bates, Esquire

ON BEHALF OF DHS: John Donovan
Assistant Chief Counsel

ORDER:

PER CURIAM. This case is presently before us on remand from the United States Court of Appeals for the (b)(6) [redacted] directing this Board to clarify what aspect of the Immigration Judge's decision we affirmed in our December 9, 2002, decision. Accordingly, we clarify that we were not persuaded by the respondent's arguments on appeal that the Immigration Judge either erred in finding the respondent's application for asylum untimely, without adequate excuse, or erred in his alternative denial of her application on its merits. With regard to timeliness, we adopt and affirm the Immigration Judge's ruling that the application for asylum was untimely filed and did not satisfy any of the regulatory excuses for such untimeliness. We note, that in this case, we agree with the Immigration Judge that the respondent failed to file her asylum application within a reasonable amount of time. Furthermore, we agree with the Immigration Judge's finding that the respondent failed to establish past persecution or a well-founded fear of future persecution. We note that the respondent testified that the government did not force her to have the abortion, nor did she have any problems with the government due to her pregnancy (Tr. at 49). From the record, it appears that the respondent made a decision and chose to have an abortion. Accordingly, as clarified, the respondent's 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 respondent is 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 Immigration and Nationality Act; 8 C.F.R. §§ 1240.26(c), (f). In the event the respondent fails to so depart, the respondent shall be removed as provided in the Immigration Judge's order.

NOTICE: If the respondent fails to depart the United States within the time period specified, or any extensions granted by the DHS, the respondent 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

(b) (6) [redacted]

under section 240B and sections 240A, 245, 248, and 249 of the Immigration and Nationality Act. *See* section 240B(d) of the Act.

FOR THE BOARD