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

In the Matter of:
(b) (6)
Respondent

(b) (6)

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

PA

This is a summary of oral decision entered on May 20, 2014.
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_____.
[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to _____ alternative to _____.
[ ] Respondent's application for voluntary departure was granted until_____ upon posting a bond in the amount of _____ with an alternative order of removal to _____
[ ] Respondent's application for asylum was ( ) granted ( ) denied ( )withdrawn ( )abandoned
[ ] Respondent's application for withholding of removal was ( ) granted ( )denied ( ) withdrawn ( )abandoned.
[ ] Respondent's application for withholding/deferral of removal under Article 3 of the Torture Convention was ( ) granted ( ) denied ( ) withdrawn.
[ ] Respondent's application for cancellation of removal under Section 240A(a) was ( )granted ( )denied ( ) withdrawn.
[ ] Respondent's application for cancellation of removal under Section 240A(b) was ( ) granted ( )denied ( ) withdrawn.
[ ] Respondent's application for a waiver under Section_____ of the INA was ( ) granted ( ) denied ( ) withdrawn ( ) other.
[ ] Respondent's application for adjustment of status under Section_____ of the INA as ( ) granted ( ) denied ( ) withdrawn.
[ ] Respondent's status was rescinded under Section 246.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.
[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the immigration Judge's oral decision.
[X] Proceedings were terminated, without prejudice. (remanded for adjudication of I-485)
[ ] Proceedings were administratively closed.
[ ] Other:_____

DATE: MAY 20 2014
Hearing conducted by: Telephone Conference/ Video Conference

Appeal: WAIVED/RESERVED(A/W/B)
APPEAL DUE BY: _____

James R. Fujimoto
Immigration Judge

File: (b) (6) Date: JAN 30 2012

In re: (b) (6)

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Brian J. Blackford, Esquire

ON BEHALF OF DHS: Clete P. Samson
Assistant Chief Counsel

APPLICATION: Reopening

On February 1, 2010, the Board granted the respondent's motion to reopen for pursuant to its sua sponte authority under 8 C.F.R. § 1003.2(a). In a decision dated (b) (6) the United States Court of Appeals for the (b) (6) vacated a decision, dated March 19, 2010, in which the Board vacated its February 1, 2010, decision in this case, and remanded the record to the Board to address the respondent's equitable tolling claim based on ineffective assistance of counsel. *See* (b) (6) *v. Holder* (b) (6)

The respondent has substantially compiled with the procedural requirements for an ineffective assistance of counsel claim before the Board. *See Habchy v. Gonzales*, 471 F.3d 858 (8th Cir. 2006); *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988). *See also* Motion Tab C. Further, upon consideration of the evidence pertaining to the medical status of the respondent's children, we find that the absence of such evidence at the removal hearing may have prejudiced the outcome of this case. *See* Motion Tab B. *See also Ortiz-Puentes v. Holder*, 662 F.3d 481,485 (8th Cir. 2011); *Obleshchenko v. Ashcroft*, 392 F.3d 970, 972 (8th Cir. 2004); *Matter of Lozada, supra*, at 639-40. We also find that the respondent has exercised due diligence in pursuing this matter before the Board. *See Kanyi v. Gonzales*, 406 F.3d 1087, 1090 (8th Cir. 2005). Hence, equitable tolling of the filing deadline is warranted in this case.

In light of the circuit court's decision, we will vacate our February 1, 2010, order, grant the respondent's motion to reopen the proceedings based on the ineffective assistance of counsel claim, and remand the record to the Immigration Judge for further proceedings.

(b) (6)

The following orders will be entered.

ORDER: The motion to reopen is granted.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with this decision.

FOR THE BOARD