IMMIGRATION COURT

Case: A# (b) (6)

In the matter of
Respondent(s): (b) (6)

ORDER OF THE IMMIGRATION JUDGE FOR REMOVAL PROCEEDINGS

This is a summary of the oral decision entered on Aug 12, 2010.
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 _____ or in the 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_____.
[X] Respondent's application for asylum was [X] granted ( ) denied ( ) withdrawn ( ) other. (208(a))
[ ] Respondent's application for withholding of removal was ( ) granted ( ) denied ( ) withdrawn ( ) other.
[ ] Respondent's application for ( )withholding of removal ( ) deferral of Removal under Article III of the Convention Against Torture was ( ) granted ( ) denied ( ) withdrawn ( ) other.
[ ] Respondent's application for cancellation of removal under section 240A(a) was ( ) granted ( ) denied ( ) withdrawn ( ) other.
[ ] Respondent's application for cancellation of removal under section 240A(b) was ( ) granted ( ) denied ( ) withdrawn ( ) other. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
[ ] Respondent's application for a waiver under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn ( ) other.
[ ] Respondent's application for adjustment of status under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn ( ) other. If granted, it was ordered that respondent be issued all appropriate documents necessary to give effect to this order.
[ ] Respondent's status was rescinded under section 246 of the INA.
[ ] 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: _____

Appeal Reserved/Waived by: A / I / B Appeal due by: _____

Date: Aug. 12, 2010

Miriam Hayward
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL [ ] PERSONAL SERVICE [X]
TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [X] ALIEN'S ATTY/REP [X] DHS

DATE: 8/12/10 BY: COURT STAFF

[ ] Other

IMMIGRATION COURT
120 MONTGOMERY STREET, SUITE 800
SAN FRANCISCO, CA 94104

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Files: (b) (6)

Date: JUN 19 2009

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Ashwani K. Bhakhri, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondents are a husband and wife, both natives and citizens of Fiji and ethnically Indo-Fijians. In a decision dated June 10, 2003, an Immigration Judge denied the respondents' application for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158 and 1231(b)(3), and protection under the Convention Against Torture. The Board dismissed their appeal in a decision dated July 16, 2004. The respondents filed a petition for review of that decision with the United States Court of Appeals for the (b) (6) They subsequently filed a motion to reopen claiming changed circumstances in Fiji, which the Board denied on May 23, 2007. The respondents also filed a petition for review of that decision. In an order dated (b) (6) the (b) (6) remanded the case for further proceedings including a determination as to whether the Fijian government was willing and able to control persons who attacked the respondents. In its order, the (b) (6) upheld the denial of the respondents' application for protection under the Convention Against Torture. We find that a remand is warranted in this case due to the passage of time since the Immigration Judge's decision and because further fact-finding on the respondents' claim may be required. *See* 8 C.F.R. § 1003.1(d)(3)(iv) (stating that the Board may not engage in fact-finding in the course of deciding appeals except for taking administrative notice of commonly known facts). At the remanded hearing, both parties shall be afforded an opportunity to present additional evidence, both documentary and testimonial.

Accordingly, the following orders shall be entered:

ORDER: The Board's July 16, 2004, decision is vacated only insofar as its pertains to the respondents' asylum and withholding of removal claim under sections 208 and 241(b)(3) of the Act.

FURTHER ORDER: The Board's May 23, 2007, decision is vacated.

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

FOR THE BOARD