File: (b) (6) Date:

In re: (b) (6) FEB 16 2005

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Howard Holderness, Esquire

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

ORDER:

PER CURIAM. This case was last before us on October 31, 2002, when we summarily affirmed, without opinion, the results of the Immigration Judge's decision denying the respondent's application for asylum, withholding of removal, and her request for protection under the Convention Against Torture. The Immigration Judge found the respondent credible regarding the persecution she suffered in Guatemala, but concluded that the persecution was not inflicted on account of a protected ground.

The matter is now before us pursuant to the (b) (6) decision of the United States Court of Appeals for the (b) (6) The court reversed the finding that the respondent had not shown that the persecution was on account of a protected ground. The court then remanded the case for consideration of changed country conditions in Guatemala, and, alternatively, for consideration of the question whether the respondent should be granted humanitarian asylum. *See* 8 C.F.R. § 1208.13(b)(1)(iii)(A). *See also Matter of Chen*, 20 I&N Dec. 16 (BIA 1989).

We have again reviewed this record and find that the persecution suffered by the respondent does come within our holding in *Matter of Chen, supra.* We note in this regard that the respondent was gang-raped by three men in front of her family, while her mother was forced to cook for the men, and her father was tied up. She was also beaten. She testified that it is still very hard for her to talk about the rapes, and when she does, "I start to cry and I can hardly talk." (Tr. at 27).

Accordingly, the decision of the Board in this case dated October 31, 2002, is vacated, the respondent's application for asylum is granted and the removal proceedings are hereby terminated.

(b) (6)

In view of the grant of asylum and termination of proceedings, any application for withholding of removal, or any request for protection under the Convention Against Torture, is moot. *See Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987).

FOR THE BOARD