U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

(b) (6)

In the Matter of:
(b) (6)

Case No.: (b) (6)

RESPONDENT

IN DEPORTATION PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Nov 21, 2006. This memorandum is solely for the convenience of the parties. If the proceedings should be appealed, the Oral Decision will become the official decision in this matter.

( ) The respondent was ordered deported to
the alternative to
( ) Respondent's application for voluntary departure was denied and respondent was ordered deported to
or in the alternative to
(X) Respondent's application for voluntary departure was granted until NOVEMBER 21, 2006
, with an alternate order of deportation NIGERIA
to
(X) Respondent's application for asylum was ( )granted ( )denied
(X)withdrawn ( )other.
(X) Respondent's application for withholding of deportation was
( )granted ( )denied (X)withdrawn ( )other.
( ) Pespondent's application for suspension of deportation was ( ) granted under section 244(a)(1) or (2) ( ) granted under section 244(a)(3) ( ) denied ( ) withdrawn ( ) other.
( ) Respondent's application for waiver under Section _____ of the Immigration and Nationality Act was ( )granted ( )denied ( )withdrawn ( )other.
( ) Respondent's application for _____ was ( )granted ( )denied ( )withdrawn ( )other.
( ) Proceedings were terminated.
( ) The application for adjustment of status under Section (216)(216A)(245)(249) was ( )granted ( )denied ( )withdrawn ( )other.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( ) Respondent's status was rescinded under Section 246.
(X) Other CAT WAS WITHDRAWN AS WELL.
( ) Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

Date: Nov 21, 2006

FREDERIC G. REEDS
Immigration Judge

Appeal: WAIVED (Alien/INS/Both)
Appeal Due by:

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

[redacted]

In the Matter of: [redacted]

Case No.: [redacted]

RESPONDENT

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Date: Nov 21, 2006

FREDERIC G. LEEDS
Immigration Judge

Appeal: WAIVED (Alien/INS/Both)
Appeal Due by:

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

Files: (b) (6)

Date: JUL 21 2004

In re: (b) (6)

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Jeffrey A. Heller, Esquire

ON BEHALF OF DHS: Jean-Lesly Celestin
Assistant District Counsel

CHARGE:

Order: Sec. 241(a)(1)(B), I&N Act [8 U.S.C. § 1251(a)(1)(B)] -
In the United States in violation of law (both respondents)

APPLICATION: Asylum; withholding of removal

This case is on remand to us from the United States Court of Appeals for the (b) (6) On April 30, 2002, we issued a decision reversing the Immigration Judge's April 1, 1997, decision granting the respondents' asylum application. The United States Court of Appeals for the (b) (6) has remanded the case to us for failing to explain our reasons for reversing the Immigration Judge. On March 16, 2004, we issued a new briefing schedule in light of this remand. Neither party has submitted a brief; however, the second respondent listed above (b) (6) has submitted a motion to remand in order to apply for adjustment of status.

In our previous decision, we relied on arguments presented by the Department of Homeland Security (DHS, formerly the Immigration and Naturalization Service) on appeal to find that the Immigration Judge erred in granting the respondents asylum. Our prior order, however, was set aside by the (b) (6) Further, there have been changes in country conditions that may well have a bearing on this case, and, as noted, we have an independent remand request from one of the respondents. Given these developments, we believe a remand to the Immigration Judge for further proceedings is the best course of action at present. Nevertheless, the (b) (6) remand envisions an explanation of the basis for our prior order and we shall proceed with that first.

The lead respondent,[1] a native and citizen of Nigeria, claims that he (and his son who is the second alien listed above) will be persecuted by the Nigerian government because he helped to fund his brother's political career with proceeds from his pharmaceutical company (Tr. at 24-29, 34). His brother is a member of the Social Democrat Party, a pro-democracy party, and was a local council member until 1993 when the government dissolved the local councils and proscribed all political parties (Tr. at 39-41). The respondent was also a member of this political party but not active like his brother. However, he alleges that he will be persecuted because the government believes him to be active.

The respondent's brother went into hiding in 1992 after shots were fired at his car, killing one of his aides (Tr. at 36-38). This was the second attempt on the brother's life; the first was in 1991 when a fight broke out during a meeting (Tr. at 41-43). The respondent himself was threatened by the military and was told by a government agent that the military had discussed killing him (Tr. at 44-48, 82).

In granting the respondent's application for asylum, the Immigration Judge clearly found the respondent credible and, relying primarily on the country reports for Nigeria, determined that although there was no evidence of past persecution, the respondent had established a well-founded fear of returning to his native country (I.J. at 3). In particular, he noted that the respondent

> has clearly presented documentation to show that his brother was an individual who was politically involved in his country, and clearly that his brother could have been and might have been a target of political activist [sic] who are against his political opinions in his country. It is also clear, that often in countries like Nigeria, one of the means of attacking the political leaders is to attack certain members of their families, and clearly, financial supporters of such political leaders, especially if they are family members, would be persons who could be subject to political and physical harm.

(I.J. at 11-12).

While we agree with the Immigration Judge that the respondent has failed to establish past persecution and that any claims of religious persecution do not meet the requirements for granting relief (I.J. at 3, 5),[2] we also previously found that the respondent did not meet his burden of establishing a reasonable possibility of being persecuted if returned to Nigeria. As pointed out by the DHS, the respondent's asylum application completely failed to mention any of his brother's political activities as a ground for fearing return to Nigeria (DHS Br. at 5-6). In fact, the respondent originally indicated that he feared persecution due to

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[1] Where only one respondent is referenced in our decision, we refer to the lead respondent.

[2] We also agree with the Immigration Judge that the respondent's land dispute was a personal problem which does not fall within the definition of persecution (I.J. at 5; Tr. at 31-33, 78).

a land dispute and because he is a Christian (Exh. 2; Tr. at 87-88). The respondent reiterated this claim before immigration officials during his asylum interview (Tr. at 87-93) and only stated his "new" fear of persecution on account of his political affiliations in an addendum he filed to the asylum application. The Immigration Judge found the respondent's explanation for this variance convincing because the attorney hired by the respondent is known for failing to file accurate or persuasive asylum applications (I.J. at 3-4). Furthermore, the respondent asserts that he did not "concoct" his political claim for asylum because the newspaper articles he submitted predate his departure (Respondent's Br. at 2-3). This, however, does not explain why the respondent failed to mention his claim at his asylum interview. Moreover, we agree with the DHS that the respondent's explanation is not persuasive – he is clearly an educated, successful businessman who speaks English (Tr. at 18-19). It is doubtful that the information in his asylum application was due to a mistake or lack of communication. In addition, the newspaper article to which the respondent refers indicates that the 1991 attack on his brother was a robbery attempt (Exh. A2; Tr. at 73).

At any rate, however, even assuming the respondent's assertions about his political affiliations and fear because of his brother's activities were true, the evidence presented below was equivocal as to the respondent's possibility of being harmed upon return to Nigeria. The respondent's brother was then no longer politically active (Tr. at 38-39, 59) which greatly lessened the likelihood that officials would be interested in the respondent. In addition, the respondent was able to leave Nigeria without any problems and the respondent's family, including his brother, continued to reside in Nigeria without experiencing harm, although his brother was apparently in hiding (Tr. at 38, 54-56, 60, 66-67, 70-71, 94-97). *See Matter of Matti*, 19 I&N Dec. 43 (BIA 1984) (the fact that the alien's family continued to reside in Iraq without harm was a factor to consider in denying his asylum application).

We also note that the respondent waited until eleven months after the assassination attempt on his brother's life to leave Nigeria, despite this being the incident which allegedly motivated the respondent to flee (Tr. at 41, 83-84). Moreover, the respondent admitted that he did not know if he is on the list of people wanted by the government (Tr. at 79).

In sum, we previously found reasons to question the respondent's claim that he will be persecuted if returned to Nigeria. While our prior order was based on these concerns, we find it unnecessary at this time to determine whether they are sufficient to override the Immigration Judge's positive credibility finding. In this respect, we note that country conditions in Nigeria have changed significantly since the Immigration Judge's decision in 1997. Specifically, the government of Nigeria has changed from an authoritarian dictatorship in 1998 to a federal republic. Although still lacking certain indices of democratization, citizens have participated in elections and the government's overall human rights record has seen marked improvements. *See, e.g.*, United States Dept. of State, *Country Reports on Human Rights Practices – 2002* (Nigeria, 2003). The Immigration Judge necessarily relied heavily on prior country conditions when finding that the respondent had established a well-founded fear of persecution. Given the (b) (6) (b) (6) action setting aside our prior order and the changes that have taken place since the

Immigration Judge's 1997 ruling, we will remand proceedings in order to allow the Immigration Judge to reassess the respondents' claim for relief and to allow the parties to present additional evidence.

Additionally, as already noted, the second respondent above (b) (6) has filed a motion to remand in order to apply for adjustment of status based on an approved employment-based visa petition which is current; he has also submitted an application for adjustment of status. The DHS has not filed an opposition to this motion and as there is no indication that the second respondent is inadmissible, we will also remand proceedings in order to allow the respondent to apply for the relief requested.

ORDER: The record of proceedings is hereby remanded in order for the Immigration Judge to issue a new decision on the respondents' request for asylum, withholding of removal, and relief under the Convention Against Torture which is consistent with this order and also for the respondent (b) (6) to apply for adjustment of status.

FOR THE BOARD