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

IN THE MATTER OF:
(b) (6)

DATE: Sep 12, 2011

CASE NO. (b) (6)

RESPONDENT IN REMOVAL PROCEEDINGS

DECISION

Jurisdiction was established in this matter by the filing of the Notice to Appear issued by the Department of Homeland Security, with the Executive Office for Immigration Review and by service upon the respondent. See 8 C.F.R. § 1003.14(a), 103.5a.

The respondent was provided written notification of the time, date and location of the respondent's removal hearing. The respondent was also provided a written warning that failure to attend this hearing, for other than exceptional circumstances, would result in the issuance of an order of removal in the respondent's absence provided that removability was established. Despite the written notification provided, the respondent failed to appear at his/her hearing, and no exceptional circumstances were shown for his/her failure to appear. This hearing was, therefore, conducted in absentia pursuant to section 240(b)(5)(A) of the *Immigration and Nationality Act*.

[✓] At a prior hearing the respondent admitted the factual allegations in the Notice to Appear and conceded removability. I find removability established as charged.

[ ] The Department of Homeland Security submitted documentary evidence relating to the respondent which established the truth of the factual allegations contained in the Notice to Appear. I find removability established as charged.

I further find that the respondent's failure to appear and proceed with any applications for relief from removal constitutes an abandonment of any pending applications and any applications the respondent may have been eligible to file. Those applications are deemed abandoned and denied for lack of prosecution. See Matter of Pearson, 13 I&N Dec. 152 (BIA 1969); Matter of Perez, 19 I&N Dec. 433 (BIA 1987); Matter of R-R, 20 I&N Dec. 547 (BIA 1992).

ORDER: The respondent shall be removed to **China** or in the alternative to on the charge(s) contained in the Notice to Appear.

JAN D. LATIMORE
Immigration Judge

cc: Assistant District Counsel
Attorney for Respondent/Respondent

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File: (b) (6)

Date: JUN 17 2011

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

APPLICATION: *Asylum; withholding of removal; Convention Against Torture*

This case is before us pursuant to a (b) (6) order of the United States Court of Appeals for the (b) (6) granting, in part, the respondent's petition for review and remanding the record for further proceedings. The record will be remanded to the Immigration Court for further proceedings and the entry of a new decision.

We review the findings of fact, including determinations of credibility, made by the Immigration Judge under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including whether or not the parties have met the relevant burden of proof, and issues of discretion, under a *de novo* standard. 8 C.F.R. § 1003.1(d)(3)(ii). As the asylum application was filed before May 11, 2005, our assessment of this case is not governed by the REAL ID Act. *Matter of S-B-*, 24 I&N Dec. 42 (BIA 2008).

The respondent, a native and citizen of the People's Republic of China, claims to fear persecution in that country on account of aid he provided to practitioners of Falun Gong. The (b) (6) agreed that the respondent had failed to demonstrate eligibility for withholding of removal or protection under the Convention Against Torture. The record has been remanded solely to consider the respondent's claim to asylum. *See* (b) (6) *v. Holder*, (b) (6) The (b) (6) affirmed the denial of withholding of removal, agreeing that the problems feared by the respondent were not on account of a ground protected under the Immigration and Nationality Act. Despite the requirement that the respondent establish this same basis for relief under the laws of asylum, given the differing levels of proof required for asylum as opposed to withholding of removal, we will remand the record for further proceedings and the entry of a new decision.

ORDER: That portion or our order of June 7, 2006, affirming the Immigration Judge's denial of asylum is vacated.

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

FOR THE BOARD