IMMIGRATION COURT

(b)(6)

In the Matter of

(b)(6)

Respondent

Case No.: (b)(6)

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Dec 15, 2006. 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 or in the alternative 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 alternate order of removal to

Respondent's application for:

[X] Asylum was [X] granted [ ] denied [ ] withdrawn

[X] Withholding of removal was [ ]granted [ ] denied [X] ~~withdrawn~~ No finding.

[ ] A Waiver under Section _____ was [ ] granted [ ] denied [ ] withdrawn

[ ] Cancellation under Section 240A(a) was [ ]granted [ ]denied [ ]withdrawn

Respondent's application for:

[ ] Cancellation under Section 240A(b)(1) was [ ] granted [ ] denied [ ] withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Cancellation under Section 240A(b)(2) was [ ] granted [ ] denied [ ] withdrawn, If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Adjustment of Status under Section _____ was [ ] granted [ ] denied [ ] withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[X] Respondent's application of [ ] witholding of removal [ ] deferral of removal under Article III of the Convention Against Torture was [ ] granted [ ] denied [X] ~~withdrawn~~ NO finding.

[ ] Respondent's status was rescinded under section 246.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.

[ ] Other: _____

Date: Dec 15, 2006

THOMAS HONG
Immigration Judge

Appeal: Waived/~~Reserved~~ ~~Appeal Due By:~~

CR4

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b)(6) [redacted] Date:

In re: (b)(6) [redacted] JUL 20 2005

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: David Z. Su, Esquire

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

ORDER:

PER CURIAM. This case is presently before us pursuant to the (b)(6) [redacted] decision of the United States Court of Appeals for the (b)(6) [redacted], as amended on (b)(6) [redacted]. The court reversed the Immigration Judge's adverse credibility finding and found the respondent eligible for asylum because his wife was forced to have an abortion in China. *See Matter of C-Y-Z-*, 21 I&N Dec. 915 (BIA 1997). *See also Ma v. Ashcroft*, 361 F.3d 553 (9th Cir. 2004). The court remanded for the Board to exercise its discretion on the asylum application, and for a determination whether he is also eligible for withholding of removal.

In view of the court's decision finding the respondent credible, we conclude that he qualifies as a refugee and is eligible for withholding of removal from China. *See Matter of X-P-T-* 21 I&N Dec. 634 (BIA 1996). Pursuant to the court's decision, the decision of the Board in this case dated December 11, 2002, is vacated. As indicated above, the respondent is also eligible for asylum, dependent upon the required security checks, and the record does not reflect that a denial of asylum in the exercise of discretion is warranted in his case. *See generally Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996). Given today's decision, any request for protection under the Convention Against Torture is moot. *See generally Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987).

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h). *See* Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals, 70 Fed. Reg. 4743, 4752-54 (Jan. 31, 2005).

Frederick D. Hess

FOR THE BOARD