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

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6)

Date:

In re: (b) (6)

NOV 21 2003

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jisheng Li, Esquire

ON BEHALF OF SERVICE: Brian E. Meyers
Assistant District Counsel

CHARGE:

Notice: Sec. 212(a)(5)(A)(i), I&N Act [8 U.S.C. § 1182(a)(5)(A)(i)] -
No valid labor certification

Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -
Present without being admitted or paroled

Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] -
Immigrant - no valid immigrant visa or entry document

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

ORDER:

PER CURIAM. This case was last before us on May 11, 2000, when we dismissed the respondent's appeal from an Immigration Judge's decision denying his applications for asylum, withholding of removal, and protection under the Convention Against Torture. We found, as had the Immigration Judge, that the respondent was not credible and had therefore not met his burden of establishing eligibility for the relief sought.

On (b) (6) the United States Court of Appeals for the (b) (6) rejected the Immigration Judge's and the Board's adverse credibility findings, and found that the respondent had suffered past persecution under the applicable law. It remanded the case to us for consideration of whether the respondent should be granted asylum in the exercise of discretion, and whether the respondent is also

eligible for withholding of removal. Accepting the court's premise that the respondent testified credibly, we find no adequate basis for denying his application for asylum as a matter of discretion. *See generally Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996). Further, based on the persecution the respondent suffered in China relating to that country's population control policies, we find that he is also eligible for withholding of removal.

Accordingly, the decision of the Board in this case dated May 11, 2000, is vacated, and the respondent's request for asylum is granted, conditioned upon an administrative determination by the Department of Homeland Security (the "DHS," formerly the Immigration and Naturalization Service) that a number is available for such grant under section 207(a)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1157(a)(5). The respondent's application for withholding of removal is also hereby granted.

FOR THE BOARD