Files: (b) (6)

Date:

JAN - 5 2012

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Marshal E. Hyman, Esquire

ON BEHALF OF DHS: Frank E. Ledda
Senior Attorney

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] -
In the United States in violation of law (both respondents)

APPLICATION: Asylum, withholding of removal, Convention Against Torture

On (b) (6) the United States Court of Appeals for the (b) (6) remanded the proceeding to this Board after finding the treatment suffered by the lead respondent,[1] in the aggregate, rose to the level of past persecution on account of her political opinion. On November 14, 2005, this Board remanded the proceeding to the Immigration Court to make necessary findings in the first instance. Following this remand, on July 12, 2010, the Immigration Judge denied the lead respondent's application[2] for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158, withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3), and protection under Article 3 of the Convention Against Torture, as implemented by 8 C.F.R. §§ 1208.16-.18.

On appeal, the lead respondent argues that the Immigration Judge erred in determining that the presumption of future persecution on account of her political opinion in Albania had been rebutted by a fundamental change in country conditions (Respondents' Br. at 8-11). The respondents also

[1] The respondents are husband and wife, both natives and citizens of Albania. The wife is the lead respondent in this case and her husband is the derivative respondent.

[2] The lead respondent's application was filed before May 11, 2005, and, therefore, it is not governed by the amendments made by the REAL ID Act to section 208(b)(1)(B) of the Act. *See Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006).

argue that the Immigration Judge erred in failing to grant them humanitarian asylum. The respondents' appeal will be dismissed.[3]

After carefully reviewing all the evidence in the respondents' case, the Immigration Judge found the respondents to be credible. The Immigration Judge observed that the (b) (6) determined that the lead respondent experienced past persecution in Albania due to her Democratic Party political activities. As the Immigration Judge explained, due to her past persecution, she was presumed to have a well-founded fear of future persecution in Albania on account of her political opinion. *See* 8 C.F.R. § 1208.13(b)(1).[4] However, based upon the prior and post-remand proceedings, the Immigration Judge found that the Department of Homeland Security had rebutted the presumption by demonstrating, by a preponderance of the evidence, a fundamental change in circumstances in Albania such that the lead respondent no longer possessed this well-founded fear (I.J. at 30-31).

Where an applicant is a refugee on the basis of past persecution, the applicant is presumed to have a well-founded fear of future persecution. In such a case, the burden shifts to the DHS to establish by a preponderance of the evidence that either there has been "a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in the applicant's country of nationality," or the applicant could avoid future persecution "by relocating to another part of his or her country of nationality . . . and under all the circumstances, it would be reasonable to expect the applicant to do so." 8 C.F.R. §§ 1208.13(b)(1)(i)(A)-(B), (ii)

In the instant case, the lead respondent maintains that conditions in Albania are still unsafe for her to return because local Socialist party members continue to persecute and kill Democratic Party members. As set forth by the Immigration Judge, the 2006 Profile of Asylum Claims for Albania (Exh. R-9, Tab D), the 2007 Department of State Country Reports on Human Rights Practices for Albania (Exh. R-9, Tab C), the 2008 Department of State Country Reports on Human Rights Practices for Albania (Exh. R-10), the 2009 Department of State Country Reports on Human Rights Practices for Albania (Exh. R-13), describe significant political changes in Albania since the lead respondent's departure in 2000 (I.J. at 31). For instance, in elections held in 2005, the Democratic Party, of which the lead respondent was a member in Albania, regained control of parliament, and the country remains today a Parliamentary democracy. Since the newly-elected democratic government has been in power, political parties are operating without restriction and the citizens enjoy universal suffrage (I.J. at 31). The most recent Country Report provides that there were no reports of arbitrary or unlawful killings by the government or its agents, politically motivated disappearances, or political prisoners or detainees (Exh. R-13; I.J. at 31-32). The government cooperated with human rights groups and took steps to fight corruption within the government and

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[3] This Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. *See* 8 C.F.R. § 1003.1(d)(3)(i). This Board reviews questions of law, discretion, and judgment, and all other issues raised in an Immigration Judge's decision *de novo*. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

[4] Additionally, past persecution gives rise to the presumption of eligibility for withholding of removal. *See* 8 C.F.R. § 1208.16(b)(1)(i).

the police and security forces (Exh. R-10). The Immigration Judge found that, as a result of the 2005 elections in which the Democratic Party regained control of the government, there was insufficient evidence that the lead respondent would be harmed if she returned to Albania (I.J. at 32-35). *See Gjyzi v. Ashcroft*, 386 F.3d 710 (6th Cir. 2004) (finding conditions have improved to such an extent that there is no objective basis for a well-founded fear of persecution based upon political activities); *see also Ceraj v. Mukasey*, 511 F.3d 583 (6th Cir. 2007). The Immigration Judge found, and we agree, that the lead respondent does not possess a well-founded fear of persecution in Albania. *See* Exhs. R-9, R-10, R-13; I.J. at 30-35); *see* 8 C.F.R. § 1003.1(d)(3)(ii).

If the DHS rebuts the presumption, the asylum application will be denied, with some exceptions. In the absence of a well-founded fear of persecution, an alien may still be granted asylum if she can show "compelling reasons for being unwilling or unable to return to the country arising out of the severity of the past persecution." *See* 8 C.F.R. § 1208.1 3(b)(l)(iii)(A); *see also Matter of Chen*, 20 I&N Dec. 16 (BIA 1989). The Immigration Judge found, and we agree, that while the harm suffered by the lead respondent may have been persecutory, it was not so severe as to constitute a compelling reason to grant asylum in the absence of a well-founded fear of persecution (I.J. at 35). *See* 8 C.F.R. § 1003.1(d)(3)(ii).

The regulations also provide that an alien who has suffered past persecution may be granted asylum absent a well-founded fear of persecution on account of a protected ground where she establishes that "there is a reasonable possibility that she may suffer other serious harm upon removal to that country." 8 C.F.R. § 1208.13(b)(l)(iii)(B). The lead respondent argues that Immigration Judge erred in reserving humanitarian asylum for cases involving severe persecution, when lack of shelter and lack of access to medical care can be other serious harm (Respondents' Br. at 3, 13). We agree with the Immigration Judge that the lead respondent, in the instant case, has not made a showing of other serious harm (I.J. at 36-37).

The Immigration Judge considered the appropriate factors when making her determination that the presumption of a well-founded fear had been rebutted. For all the reasons noted by the Immigration Judge, we agree that the DHS established by a preponderance of the evidence, that due to a fundamental change in country conditions, the lead respondent no longer possesses a well-founded fear of future persecution in Albania on account of her race, religion, nationality, membership in a particular social group, or political opinion. *See Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987); *see also Matter of D-I-M,* 24 I&N Dec. 448 (BIA 2008). *see also* 8 C.F.R. § 1003.1(d)(3)(ii). As such, we agree that she was not eligible for asylum or withholding of removal.

Lastly, we find the lead respondent has failed to show that it is more likely than not that she would be subject to abuse amounting to torture by or with the acquiescence of – to include the concept of willful blindness – any government official if returned to Albania (I.J. at 38-39). *See* 8 C.F.R.§ 1003.1(d)(3)(ii); 8 C.F.R. §§ 1208.16(c)(2) and (3). Therefore, we agree she has not established eligibility for protection under the CAT.

Accordingly, the following order shall be entered.

ORDER: The respondents' appeal is dismissed.

FOR THE BOARD

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 July 12, 2010. 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.

[X] The respondent was ordered removed from the United States to Albania 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 ( )granted (X)denied( )withdrawn.

[X] Withholding of removal was ( )granted (X)denied ( )withdrawn.

[ ] A Waiver under Section _____ was ( )granted ( )denied ( )withdrawn.

[ ] Cancellation of removal 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 appropriate 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 (X) withholding of removal ( ) deferral of removal under Article III of the Convention Against Torture was ( ) granted (X) denied ( ) withdrawn.

[ ] 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.

[ ] Proceedings were terminated.

[ ] Other: _____.

Date: Jul 12, 2010

MARSHA K. NETTLES
Immigration Judge

Appeal: Waived/Reserved Appeal Due By: August 11, 2010

IMMIGRATION COURT

(b) (6)

In the Matter of

(b) (6)

Respondent

Case No.: (b) (6)

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[ ] Other: _____.

Date: Jul 12, 2010

MARSHA K. NETTLES
Immigration Judge

Appeal: Waived/Reserved Appeal Due By: August 11, 2010

UNITED STATES DEPARTMENT OF JUSTICE
Executive Office For Immigration Review
Office of the Immigration Judge
(b) (6)

In the Matter of:

(b) (6)

Case No:

(b) (6)

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of respondent's/applicant's **MOTION TO REOPEN** filed in the above matter, it is **HEREBY ORDERED** that the motion

__XX__ **BE GRANTED**

___ **BE DENIED;**

Marsha K. Nettles
U.S. Immigration Judge

April 12, 2006
Date MKN

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

IN THE MATTER OF:
(b) (6)

DATE: Mar 10, 2006

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 Immigration and Naturalization Service, with the Executive Office for Immigration Review and by service upon the respondent. See 8 C.F.R. sections 3.14(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.

[X] 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 Immigration and Naturalization Service 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 ALBANIA on the charge(s) alternative to contained in the Notice to Appear.

Marsha K. Nettles

MARSHA K. NETTLES
Immigration Judge

cc: Assistant District Counsel
Attorney for Respondent/Respondent

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DDC

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

IN THE MATTER OF:
(b) (6)

DATE: Mar 10, 2006

CASE NO. (b) (6)

RESPONDENT IN REMOVAL PROCEEDINGS

DECISION

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

Marsha K. Nettles

MARSHA K. NETTLES
Immigration Judge

cc: Assistant District Counsel
Attorney for Respondent/Respondent

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DDC

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

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

Files: [redacted]

Date: NOV 14 2005

In re: [redacted]

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US DEPARTMENT OF JUSTICE
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EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
IMMIGRATION COURT
DETROIT, MI

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Richard Kulics, Esquire

ON BEHALF OF DHS: Rosario S. Shoudy
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] -
In the United States in violation of law (both respondents)

APPLICATION: Asylum; withholding of removal

ORDER:

PER CURIAM. This case is presently before us pursuant to the [redacted] decision of the United States Court of Appeals for the [redacted] The court found that the treatment the lead respondent suffered in Albania, considered in the aggregate, rose to the level of past persecution, and it was inflicted on account of the respondent's political opinion. The court remanded the case for various issues to be decided, applying the presumption of future persecution that arises when past persecution has been shown. 8 C.F.R. § 1208.13(b)(1)(ii). While the court remanded to the Board to make those determinations, the Board does not engage in fact-finding, and the issues to be resolved must be decided by the Immigration Judge in the first instance. *See* 8 C.F.R. § 1003.1(d)(3)(iv). Therefore, a remand to the Immigration Judge is required.

Accordingly, the decision of the Board in this case dated September 8, 2003, is vacated, and the record is remanded to the Immigration Judge for further proceedings consistent with this decision and the decision of the court.

Frederick D. Hess

FOR THE BOARD

EXHIBIT # R6
MAR 10 2006
MARSHA K. NE...
IMMIGRATION JUDGE