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 March 17, 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.

[ ] 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:

[ ] Asylum was ( )granted ( )denied( )withdrawn.

[ ] Withholding of removal was ( )granted ( )denied ( )withdrawn.

[X] A Waiver under Section 212(i) was (X)granted ( )denied ( )withdrawn.

[ ] Cancellation of removal under section 240A(a) was ( )granted ( )denied ( )withdrawn.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[ ] Cancellation under section 240A(b)(1) was ( ) granted ( ) denied ( ) withdrawn.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[ ] Cancellation under section 240A(b) (2) was ( )granted ( )denied ( )withdrawn.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.

[X] Adjustment of Status under Section 245 was (X)granted ( )denied ( )withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Respondent's application of ( ) withholding of removal ( ) deferral of removal under Article III of the Convention Against Torture was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's status was rescinded under section 246.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

[X] Other: Category = IR-6

Date: March 17, 2010

Philip L. Morace

PHILIP L. MORACE
Immigration Judge

Appeal: Waived/Reserved Appeal Due By:

File: (b) (6) Date: NOV 1 4 2008

In re: (b) (6)

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Visuvanathan Rudrakumaran, Esquire

ON BEHALF OF DHS: Michael S. Lonoff
Assistant Chief Counsel

APPLICATION: Reopening

ORDER:

PER CURIAM. This case was last before the Board on December 17, 2003, when we denied the respondent's motion to reopen the instant removal proceedings based on ineffective assistance of his former counsel, James Lombardi. This matter is now before us pursuant to the (b) (6) decision of the United States Court of Appeals for the (b) (6) (the (b) (6) *See* (b) (6) *v. Mukasey*, (b) (6) held that the Board abused its discretion in rejecting the respondent's ineffective-assistance-of-counsel claim without a more thorough factual examination of the nature of the respondent's agreement with counsel and, if such a consideration warranted it, a consideration of the meaning and applicability of the procedural requirements of *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), within the context of general retainer agreements. *Id.* at 138. The (b) (6) remanded this case to the Board, with instructions to remand the case to an Immigration Judge for further findings of fact on the exact parameters of the relationship between the respondent and Lombardi and, if necessary, for both the Immigration Judge and the Board to determine, "in the first instance, whether the understanding between [the respondent and Lombardi] serves the functions embodied in *Lozada's* 'agreement' requirement, and whether in light of that determination, [the respondent's] allegations have substantially complied with this requirement." *Id.* at 138-39.

Consistent with the (b) (6) order, we hereby remand this matter to the Immigration Judge to make the additional factual and legal determinations mandated by the (b) (6) Upon remand, the parties should also address whether ineffective assistance of counsel may constitute an exception to the April 30, 2001, statutory deadline in section 245(i) of the Immigration and Nationality Act, 8 U.S.C. § 1255(i). We deny the Department of Homeland Security's motion for

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a "limited remand" and return jurisdiction over these proceedings to the Immigration Judge. After conducting the requisite further proceedings and addressing any other additional matters the parties may raise, the Immigration Judge should enter a new decision that is not inconsistent with the

(b) (6) (b) (6) order and the Board's instant order.

FOR THE BOARD