Files: (b) (6)

Date: JUN -8 2011

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Vera A. Weisz, Esquire

ON BEHALF OF DHS: Ingrid Abrash
Senior Attorney

APPLICATION: Withholding of removal; remand

This case was last before us on January 18, 2006, when we affirmed the Immigration Judge's September 13, 2004, decision denying the respondents' applications for asylum and withholding of removal under sections 208(a), and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(a), and 1231(b)(3), protection under the Convention Against Torture ("CAT"), and for cancellation of removal under section 240A(b)(1) of the Act. In an amended (b) (6) decision, the United States Court of Appeals for the (b) (6) denied the respondents' petition with respect to the respondents' claims pursuant to asylum and cancellation of removal, and noted that the respondents' waived review of their CAT claim. (b) (6) *v. Holder*, (b) (6) (b) (6) The (b) (6) however, granted the respondents' petition for review with respect to their application for withholding of removal under the Act, determining that Christians are a "disfavored group" in Indonesia and remanding the record for further analysis in light of this finding. *Id.*

On remand before the Board, the Department of Homeland Security argued that the respondents have not satisfied their burden of proof for withholding of removal even under the disfavored group analysis. The respondents, on the other hand, have requested that their case be remanded so that the Immigration Judge may apply the disfavored group analysis as directed by the (b) (6) The respondents have also requested that the case be remanded to the Immigration Judge for consideration of new evidence in support of their application for cancellation of removal under section 240A(b)(1) of the Act.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under a "clearly erroneous" standard. We review all other issues, including whether the parties have met their relevant burden of proof, and issues of discretion, under a *de novo* standard. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

The Immigration Judge previously found that the respondents have not established past persecution in their native Indonesia. This determination, which we affirmed in our January 18, 2006, was not been disturbed by the (b) (6) decision. (b) (6) *v. Holder, supra,* at (b) (6) We will, however, remand the record in order for the Immigration Judge to consider in the first instance the respondents' eligibility for withholding of removal under the disfavored group analysis, as articulated and clarified by the (b) (6) in (b) (6) *v. Holder, supra,* and its intervening decisions, including *Wakkary v. Holder,* 558 F.3d 1049, 1056 (9th Cir. 2009), and *Halim v. Holder,* 590 F.3d 971 (9th Cir. 2009). The Immigration Judge should thereafter determine whether the respondents have satisfied their burden of proving the other requisite elements of a claim under withholding of removal under the Act. *See* 8 C.F.R. § 1208.16.

The respondents' application for cancellation of removal under section 240A(b)(1) of the Act should likewise be reconsidered in remanded proceedings, in view of the new evidence regarding country conditions in Indonesia and their United States citizen children's current and specific circumstances. In view of the foregoing, the following order shall be entered.

ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion.

FOR THE BOARD