U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

(b) (6)

Served on the Department of Homeland Security

In the Matter of:

(b) (6)

RESPONDENT

Case No: (b) (6)

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

After considering the facts and circumstances of this case and as there is no opposition from the parties, it is HEREBY ORDERED that these proceedings be terminated with / without prejudice.

NTA dated: Dec 14, 2005.

Reason for Termination: Respondent has received derivative asylee status. No DHS response received.

REBECCA L. HOLT
Immigration Judge
Date: ~~Mar 5, 2014~~ 5/8/14

Appeal Waived/Reserved by A/I: NO APPEAL
Appeal Due Date: _

CERTIFICATE OF SERVICE

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Form EOIR 35 - 6T (Termination)

File: (b) (6)

Date: OCT 31 2011

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jim Li, Esquire

ON BEHALF OF DHS: William A. Lund
Assitant Chief Counsel

CHARGE:

Notice: 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 removal; Convention Against Torture

This case was last before the Board on April 8, 2009, when we denied the respondent's Motion for Reconsideration of our January 13, 2009, decision. In our January 13, 2009, decision we sustained the Department of Homeland Security's (DHS) appeal of the Immigration Judge's January 4, 2007, decision granting the respondent's application for asylum. *See* section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158. The respondent appealed that decision to the United States Court of Appeals for the (b) (6) (the "(b) (6)"). On (b) (6) the court issued a decision remanding the matter to the Board for further consideration of whether the respondent is a member of a particular social group for purposes of asylum and for consideration of the merits of her claim for protection under the Convention Against Torture. The record will be remanded to the Immigration Judge for further proceedings and for the entry of a new decision.

On appeal, th(b) (6) considered the Board's January 13, 2009, decision overturning the Immigration Judge's grant of asylum and ordering the respondent removed to China. The(b) (6) (b) (6) decision laid out pertinent facts, and included a discussion of the relevant legal issues in the case. The Board is mindful of the law of the case doctrine which precludes reconsideration of previously decided issues. The(b) (6) decision includes statements that would seem to indicate the Court has concluded that the respondent was a member of a particular social group, and that she has fulfilled the requirements for establishing asylum.[1] However, despite these statements,

[1] The referenced statements in the(b) (6) decision include, ". . . it appears that(b) (6) has shown that she is a member of a particular social group of women in China who have been subjected to forced marriage and involuntary servitude, " ". . . the record shows that(b) (6) would classify as a

(continued...)

(b) (6)

the (b) (6) remanded the case to the Board for us to consider whether the respondent qualifies as a member of a particular social group for purposes of asylum. (b) (6) (b) (6) Where there is substantial doubt as to whether the Circuit Court actually decided an issue, we are not foreclosed from considering the issue on remand. *See Westside Mothers v. Olszewski*, 454 F.3d 532 (6th Cir. 2006). Based on the (b) (6) directions on remand, we believe the Board is not precluded from reconsidering whether the respondent was persecuted or has a well-founded fear of persecution in China on account of her membership in a particular social group.

The (b) (6) framed the respondent's particular social group as, "women in China who have been subjected to forced marriage and involuntary servitude." (b) (6) *supra*, at (b) (6) This proposed particular social group was not presented before the Immigration Judge or the Board (12/15/06 I.J. at 7; 1/4/07 I.J. at 2; Tr. at. at 46; BIA at 2). An applicant for asylum or withholding of removal must establish that the persecution he or she suffered, or fears, is on account of his or her race, nationality, religion, membership in a particular social group, or political opinion. Further, in cases such as the respondent's case that the REAL ID Act of 2005 governs, the alien must show that a protected ground was or will be "at least one central reason" for the past or feared persecution. Section 208(b)(1)(B)(i) of the Act; *see also Matter of C-T-L-*, 25 I&N Dec. 341 (BIA 2010).

The (b) (6) found that the respondent's case was a mixed motive case.[2] (b) (6) *supra*, at (b) (6) The motive of a persecutor is a factual determination. Since the claimed particular social group was not raised before the Immigration Judge, he made no specific factual findings regarding the respondent and forced marriage and/or involuntary servitude. This Board is precluded from fact-finding. Therefore, we find it appropriate to remand this matter to the Immigration Judge to provide additional fact-finding and a new decision as to whether the respondent was persecuted on account of her membership in the claimed particular social group. *See Matter of Fedorenko*, 19 I&N Dec. 57, 74 (BIA 1984) (noting that "[t]he Board is an appellate body whose function is to review, not create, a record"); 8 C.F.R. § 1003.1(d)(3)(iv) (limiting the Board's fact-finding authority and stating the Board may remand the proceeding to the Immigration Judge where further fact-finding is needed); *see generally Matter of Coelho*, 20 I&N Dec. 464 (BIA 1992). In reaching a conclusion, the Immigration Judge will give due consideration to the concerns expressed by the (b) (6) in its remand order.

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[1] (...continued)
member of a particular social group," and (b) (6) seems to have made the requisite showing that she is a member of a particular social group for asylum purposes." (b) (6) (b) (6)

[2] The (b) (6) opined that in order to prove that the respondent was persecuted on account of her membership in a particular social group she need only show that her abductor was motivated, at least in part on account of an enumerated ground. (b) (6) *supra*, at (b) (6) However, she filed her asylum application in 2006. We therefore note that this case falls under the REAL ID Act which requires that the respondent must establish that her membership in a particular social group was or will be at least one central reason for the persecution. REAL ID Act § 101(a)(3), section 208(b)(1)(B)(I) of the Act.

(b) (6)

The Immigration Judge denied the respondent protection under the Convention Against Torture in his December 15, 2006, decision. The Immigration Judge did not alter that decision in his Supplemental Order issued on January 4, 2007. The Board upheld the Immigration Judge's initial denial of protection. The (b) (6) found that due to the procedural posture of the case, it was not clear whether the respondent was aware that she had to argue on appeal before the Board that she was eligible for protection under the Convention Against Torture. The (b) (6) further found that it is not clear from the record that the respondent does not have a viable claim for protection. *See* 8 C.F.R. § 1208.16. Based on the (b) (6) remand order, we find it appropriate to allow the parties an opportunity to supplement the record with their arguments before the Immigration Judge for full consideration and, if appropriate, a new hearing as to the respondent's eligibility for protection under the Convention Against Torture. 8 C.F.R. § 1003.1(d)(3)(iv). Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

FOR THE BOARD