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

IN THE MATTER OF:
(b) (6)

DATE: Nov 19, 2012

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 Department of Homeland Security, with the Executive Office for Immigration Review and by service upon the respondent. See 8 C.F.R. § 1003.14(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.

[✓] 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 Department of Homeland Security 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 CHINA
on the charge(s)
contained in the Notice to Appear.

JAN D. LATIMORE
Immigration Judge

cc: Assistant District Counsel
Attorney for Respondent/Respondent

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File: (b) (6)

Date: MAR – 5 2012

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Jo Ann M. Platel
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

This case was previously before the Board on December 24, 2008, when we dismissed the respondent's appeal from the Immigration Judge's decision denying his application for asylum and withholding of removal, and his request for protection under the Convention Against Torture (CAT). We found. as had the Immigration Judge, that the respondent had not shown that any harm he suffered in China was on account of a protected ground.[1] The matter is now before us pursuant to the (b) (6) decision of the United States Court of Appeals for the (b) (6) (b) (6) *v. Holder*, (b) (6) The court found that "the past mistreatment (b) (6) suffered was on account of a protected ground." It remanded the case because "neither the Immigration Judge nor the BIA reached the issue of whether the past mistreatment (b) (6) suffered by Chinese officials constitutes past persecution, or whether (b) (6) has a well-founded fear of future persecution." The court also remanded for further consideration of the respondent's CAT claim.

In view of the court's decision, a further remand is necessary to allow the Immigration Judge to rule on the issues remaining in the first instance. Accordingly, the following order will be entered:

ORDER: The decision of the Board dated December 24, 2008, is vacated and the record is remanded to the Immigration Judge for further proceedings consistent with this decision and the decision of the (b) (6)

FOR THE BOARD

[1] The Immigration Judge also found the respondent not credible, but we did not reach this issue on appeal.