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

IN THE MATTER OF:
(b) (6)

DATE: May 15, 2007

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.

[ ] At a prior hearing the respondent admitted the factual allegations in the Notice to Appear and conceded removability. I find removability established as charged.

[X] 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 INDONESIA or in the alternative to on the charge(s) contained in the Notice to Appear.

Charles E. Pazar
CHARLES E. PAZAR
Immigration Judge

cc: Assistant District Counsel
Attorney for Respondent/Respondent

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File: (b) (6)

Date:

In re: (b) (6)

APR 12 2007

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jaime G. Monteclaro, Esquire

ON BEHALF OF DHS: Richard J. Averwater
Assistant District Counsel

APPLICATION: Protection under the Convention Against Torture

ORDER:

PER CURIAM. This case is presently before us pursuant to the (b) (6) decision of the United States Court of Appeals for th(b) (6) The court found that it was without jurisdiction to review the Immigration Judge's finding that the respondent's asylum application was untimely filed. It upheld the Immigration Judge's finding that the respondent had not met his burden of establishing eligibility for withholding of removal. However, the court found that the Immigration Judge applied the wrong standard in considering the respondent's request for protection under the Convention Against Torture (CAT). The Immigration Judge required that the respondent show that government officials wilfully accept tortuous activities, but the court held that the standard should be that "willful blindness" can constitute "acquiescence" to torture. (b) (6) *v. Gonzales*, (b) (6) rejecting *Matter of S-V-*, 22 I&N Dec. 1306 (BIA 2000).

In discussing the respondent's request for CAT protection, both at the hearing and in his decision, the Immigration Judge relied upon our decision in *Matter of S-V-, supra*. The court's remand therefore requires a remand to the Immigration Judge, so that he may consider in the first instance the factual issue of "willful blindness." Accordingly, the record is remanded to the Immigration Judge for further proceedings consistent with this decision and the decision of the court.

FOR THE BOARD