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

IN THE MATTER OF:
(b) (6)

DATE: Apr 3, 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 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.

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

A. ASHLEY TABADDOR
Immigration Judge

cc: Assistant District Counsel
Attorney for Respondent/Respondent

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File: (b) (6) Date:

In re: (b) (6) AUG 15 2006

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Ricardo Alberto Figueroa, Esquire

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] - Present without being admitted or paroled

APPLICATION: Reconsideration

ORDER:

PER CURIAM. This case is presently before us pursuant to the (b) (6) decision of the United States Court of Appeals for the (b) (6) The court found that the respondent timely filed his motion to reconsider with the Board, and that the filing tolled his voluntary departure time. (b) (6) *v. Gonzales*, (b) (6) The court remanded the case for the Board to rule on the respondent's claim that he was denied the right to counsel when the Immigration Judge required him to go forward at this hearing without his attorney present. The court noted that the respondent's claim in this regard is "undeniably strong," and that his need for a continuance was not due to unreasonable conduct on his part. In view of the court's decision, we find that the respondent should have been granted a further continuance so that he could proceed with counsel. Accordingly, the decisions of the Board in this case dated June 10, 2003, and February 20, 2003, are vacated, and the record is remanded to the Immigration Judge for further proceedings consistent with this decision and the decision of the court.

FOR THE BOARD