IMMIGRATION COURT

In the Matter of

(b) (6)

Respondent

Case No.: (b) (6)

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 11/20/08.
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[ ] The respondent was ordered removed from the United States to or in the alternative to .

[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to or in the alternative to .

[ ] Respondent's application for voluntary departure was granted until upon posting a bond in the amount of $ _____ with an alternate order of removal to .

Respondent's application for:

[✓] Asylum was (✓)granted ( )denied( )withdrawn.

[ ] Withholding of removal was ( )granted ( )denied ( )withdrawn.

[ ] A Waiver under Section _____ was ( )granted ( )denied ( )withdrawn.

[ ] Cancellation of removal under section 240A(a) was ( )granted ( )denied ( )withdrawn.

Respondent's application for:

[ ] Cancellation under section 240A(b)(1) was ( ) granted ( ) denied ( ) withdrawn. If granted, it is ordered that the respondent be issued all appropriate documents necessary to give effect to this order.

[ ] Cancellation under section 240A(b) (2) was ( )granted ( )denied ( )withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Adjustment of Status under Section ____ was ( )granted ( )denied ( )withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Respondent's application of ( ) withholding of removal ( ) deferral of removal under Article III of the Convention Against Torture was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's status was rescinded under section 246.

[ ] Respondent is admitted to the United States as a _____ until _____.

[ ] As a condition of admission, respondent is to post a $ _____ bond.

[ ] Respondent knowingly filed a frivolous asylum application after proper notice.

[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

[ ] Proceedings were terminated.

[ ] Other: _____.

Date: Nov 20, 2008

JAN M. LATIMORE
Immigration Judge

Appeal: Waived/Reserved Appeal Due By:

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
(b) (6)

In the Matter of:
(b) (6)
RESPONDENT

Case No.: (b) (6)
Docket: (b)(6)

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of RESPONDENT

( ) Motion to Reconsider an Immigration Judge's decision

(X) Motion to Reopen proceedings

filed in the above entitled matter, it is hereby ordered that the motion

(✓) Be Granted

( ) Be Denied for reasons indicated in the attached decision

JAN D. LATIMORE
Immigration Judge
Date: OCT - 2 2007

Appeal: NO APPEAL (A/I/B)
Appeal Due By:

CERTIFICATE OF SERVICE
THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [✓] Alien's ATT/REP [✓] DHS
DATE: 10-2-07 BY: COURT STAFF
Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

Form EOIR 2 - 2T

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

IN THE MATTER OF:
(b) (6)

DATE: Oct 27, 2004

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.

[ ] 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 CHINA or in the alternative to 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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CR4

U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6)

Date:

JUL 22 2004

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Ping C. Shen, Esquire

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] - In the United States in violation of law

APPLICATION: Asylum; withholding of removal; protection under the Convention Against Torture

ORDER:

PER CURIAM. This case was last before us on September 26, 2002, when we summarily affirmed, without opinion, the results of the Immigration Judge's decision denying the respondent's application for asylum and withholding of removal, and protection under the Convention Against Torture. The Immigration Judge's decision was based on her finding that the respondent did not testify credibly regarding his asylum claim.

On (b) (6), the United States Court of Appeals for the (b) (6) reversed the Immigration Judge's adverse credibility finding. It found that the respondent had suffered past persecution in China, and that the persecution was inflicted at least in part on account of the respondent's religion. The court noted that the question of whether the respondent presently has a well-founded fear of persecution in China based on current country conditions had not been addressed. It remanded the case for further proceedings to determine whether the government can rebut the presumption that the respondent has a well-founded fear of future persecution, and whether asylum should be granted in the exercise of discretion. *See* 8 C.F.R. § 1208.13(b)(1).

In view of the court's holdings, we find that a remand is necessary. On remand, both parties will have the opportunity to present and develop evidence regarding current country conditions in China, and how those conditions might affect the respondent's application for asylum. *See Rios v. Ashcroft*, 287 F.3d 895 (9th Cir. 2002). Any remaining issues relating to the respondent's persecution claim may also be addressed on remand.

(b) (6)

Accordingly, the decision of the Board in this case dated September 26, 2002, is vacated, and the record is remanded to the Immigration Judge for a further hearing consistent with the court's decision.

FOR THE BOARD