File: (b) (6)

Date: FEB 26 2009

In re: (b) (6)

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Yee Ling Poon, Esquire

APPLICATION: Reconsideration

This case was last before us on October 31, 2008, when we remanded the case to the Immigration Judge for further proceedings regarding the respondent's application for asylum and withholding of removal after we had dismissed her appeal of an Immigration Judge's denial of her application for protection under the Convention Against Torture. [1] The respondent filed a timely motion to reconsider. On December 16, 2008, counsel for the respondent informed the Board that she had learned that the respondent had passed away, provided a copy of the respondent's death certificate, and moved to withdraw the pending motion to reconsider.

Accordingly, the following orders shall be entered:

ORDER: The motion to withdraw the pending motion to reconsider is granted.

FURTHER ORDER: The Board's October 31, 2008, decision is vacated insofar as it remanded the record to the Immigration Judge for further proceedings.

FURTHER ORDER: The respondent's appeal of the Immigration Judge's denial of her application for asylum and withholding of removal is dismissed as moot.

FOR THE BOARD

[1] The Board's decision was rendered in response to a (b) (6) remand order from the United States Court of Appeals for the (b) (6)

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)

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: Jun 10, 2003.

Reason for Termination: Respondent passed away on 2/22/08

JILL H. DUFRESNE
Immigration Judge
Date: 1/23/09

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

CERTIFICATE OF SERVICE
THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [ ] Alien's ATT/REP [M] DHS
DATE: 1/26/09 BY: COURT STAFF
Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

Form EOIR 35 - 6T (Termination)

File: (b) (6) Date: OCT 3 1 2008

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Yee Ling Poon, Esquire

ON BEHALF OF DHS: Roger K. Picker
Assistant 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 comes to us on remand from the United States Court of Appeals for the (b) (6) In a decision dated (b) (6) the court vacated our March 23, 2006, decision affirming an Immigration Judge's decision denying the respondent's applications for asylum, withholding of removal, and for protection under the Convention Against Torture.[1] We did not address the Immigration Judge's adverse credibility determination, but affirmed her decision finding that the respondent had failed to meet her burden of establishing eligibility for relief based on her having been forcibly inserted with an IUD, removing it and having a second child in opposition to China's coercive family planning policy, and leaving the country illegally with the help of a "snakehead." The (b) (6) noted that, at that time, we had not yet published a precedential decision on the issue of "whether, and under what circumstances, the forced insertion and continued usage of an IUD constitutes persecution." (b) (6) *v. Mukasey*, (b) (6)

However, we have recently published a decision on point. In *Matter of M-F-W- & L-G-*, 24 I&N Dec. 633 (BIA 2008), we held that the insertion of an IUD does not rise to the level of harm necessary to constitute persecution, absent aggravating circumstances. Furthermore, where the insertion or reinsertion of an IUD is carried out as part of a routine medical procedure, an alien will not be able to establish the required nexus, i.e., that the procedure was or would be because of her resistance to China's family planning policy, although an act that thwarts the goals of China's family

[1] Believing that the (b) (6) had granted the government's motion to remand, we erroneously vacated our March 23 decision on April 6, 2007, and remanded to allow for further testimony about the respondent's claim; we subsequently vacated that order, however, on April 30, 2007, because it was clear that the government's motion to remand had not been granted and our prior order was issued in error.

planning policy, such as removing an IUD or failing to attend a mandatory gynecological appointment may constitute resistance to the policy to support a claim of persecution under the Immigration and Nationality Act. *Id.*

From the facts of record, it does not appear that the respondent can establish eligibility for asylum or withholding of removal based on having had an IUD forcibly inserted, removing it, and having given birth to a second child in violation of China's family planning policy. We will remand for further evidence to be provided, and for further analysis by the Immigration Judge, however, particularly in light of the (b) (6) comments regarding possible due process violations when the Immigration Judge curtailed the respondent's testimony on the issue of IUD insertion. *Id.* at 695-96.[2]

We find no grounds upon which to remand to reassess the respondent's claim for protection under the Convention Against torture. The (b) (6) remand noted that we applied the wrong standard in denying the respondent's claim. The Court is correct that in lumping the forms of relief together, it appeared that we did not properly assess the respondent's claim that she will more likely than not be tortured. Unlike asylum and withholding of removal, there is no nexus requirement, as well as other differences in the forms of relief. Nevertheless, we find that the Immigration Judge correctly found that the respondent failed to establish that it is more likely than not she will be tortured for having left China illegally (I.J. at 10). There is no persuasive evidence to support a contrary conclusion. The respondent was able to leave China with a passport and no apparent problems from the authorities. We cannot conclude that there is sufficient evidence to find that the respondent will be tortured.

ORDER: The Immigration Judge's decision denying the respondent's request for protection under the Convention Against Torture is affirmed.

FURTHER ORDER: The record of proceedings is remanded for further proceedings consistent with this order.

FOR THE BOARD

[2] In fact, in our order issued on April 6, 2007, subsequently vacated as noted in footnote one above, we remanded for precisely those reasons: to allow the respondent to present additional evidence about the IUD insertion which had been foreclosed by the Immigration Judge.