U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

(b) (6)

In the Matter of

(b) (6)

Respondent

Case No.: A (b) (6)

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 04 / 26 / 2007. 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 of the case.

[ ] The respondent was ordered removed from the United States to _____.
[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to _____ alternative to _____.
[ ] Respondent's application for voluntary departure was granted until _____/_____/_____ upon posting a bond in the amount of $_____ with the alternate order of removal to _____.

Respondent's application for:
[X] Asylum was (X) granted ( ) denied ( ) withdrawn.
[X] Withholding of removal was (X) granted ( ) denied ( ) withdrawn.
[ ] A Waiver under Section _____ was ( ) granted ( ) denied ( ) withdrawn.
[ ] Cancellation of removal under section 240A(a) was ( ) granted ( ) denied ( ) withdrawn.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[ ] Cancellation of removal under section 240A(b)(1) was ( ) granted ( ) denied ( ) withdrawn. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
[[Cancellation of removal under section 240(b)(2) was ( ) granted ( )denied ( ) withdrawn. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order
[ ] Respondent's application for adjustment of status under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn. If granted, it was ordered that respondent be issued all appropriate documents necessary to give effect to this order.
[X] Respondent's application for (X) withholding of removal ( ) deferral of removal under Article III of the Convention Against Torture was ( ) granted (X) denied ( ) withdrawn or ( ) other.
[ ] Respondent's status was rescinded under section 246.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: 04 / 26 / 2007

Immigration Judge

Appeal: WAIVED/RESERVED (A/I/B)

Appeal Due By:

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) FAX (F)
TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [ ] ICE
DATE: 4-30-07 BY: COURT STAFF NDLT
Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [M] Other ff-post-order instructions Q6

Files: (b) (6)

Date:

DEC 19 2005

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Angel Bortel, Esquire

ON BEHALF OF DHS: James S. Yi
Assistant District Counsel

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

ORDER:

PER CURIAM. This case was last before us on January 26, 2004, when we dismissed the respondents' appeal from an Immigration Judge's decision denying their applications for asylum and withholding of removal, and their requests for protection under the Convention Against Torture. We found, as had the Immigration Judge, that the treatment the lead respondent received in Russia did not rise to the level of persecution.

The matter is now before us pursuant to the (b) (6) decision of the United States Court of Appeals for the (b) (6) The court found that the treatment the respondent encountered, considered cumulatively, did rise to the level of persecution. The court further found that the persecution was on account of the respondent's Jewish religion, and that the Russian authorities were unwilling or unable to control the anti-Semitic groups responsible for the respondent's mistreatment. The case was remanded for a determination whether the Department of Homeland Security (DHS) can rebut the presumption of future persecution.

In view of the court's decision that the lead respondent suffered past persecution, a remand is necessary. On remand, both parties will have the opportunity to present and develop evidence regarding current country conditions in Russia, and how those conditions might affect these

respondents' applications for asylum, withholding of removal, and protection under the Convention Against Torture. *See Lopez v. Ashcroft*, 366 F.3d 799 (9th Cir. 2004). As indicated above, because past persecution has been shown, the burden of proof now shifts to the Department of Homeland Security to rebut the presumption of future persecution. 8 C.F.R. § 1208.13(b)(1)(ii). Accordingly, the decision of the Board in this case dated January 26, 2004, is vacated, and the record is remanded to the Immigration Judge for further proceedings consistent with this decision and the decision of the court.

Frederick D'Hoa

FOR THE BOARD