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

In the Matter of:
(b) (6)

Case No.: (b) (6)

RESPONDENT

IN DEPORTATION PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Jan 30, 2006. This memorandum is solely for the convenience of the parties. If the proceedings should be appealed, the Oral Decision will become the official decision in this matter.

( ) The respondent was ordered deported to
the alternative to

( ) Respondent's application for voluntary departure was denied and respondent was ordered deported to
or in the alternative to

( ) Respondent's application for voluntary departure was granted until , with an alternate order of deportation to

(X) Respondent's application for asylum was (X)granted ( )denied ( )withdrawn ( )other.

( ) Respondent's application for withholding of deportation was ( )granted ( )denied ( )withdrawn ( )other.

( ) Respondent's application for suspension of deportation was ( ) granted under section 244(a)(1) or (2) ( ) granted under section 244(a)(3) ( ) denied ( ) withdrawn ( ) other.

( ) Respondent's application for waiver under Section _____ of the Immigration and Nationality Act was ( )granted ( )denied ( )withdrawn ( )other.

( ) Respondent's application for _____ was ( )granted ( )denied ( )withdrawn ( )other.

( ) Proceedings were terminated.

( ) The application for adjustment of status under Section (216)(216A)(245)(249) was ( )granted ( )denied ( )withdrawn ( )other. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.

( ) Respondent's status was rescinded under Section 246.

( ) Other _____.

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

Date: Jan 30, 2006

_____
PATRICK T. MCDERMOTT
Immigration Judge

Appeal: WAIVED (Alien/INS/Both)
Appeal Due by:

MIM

File: (b) (6) [redacted]

Date: AUG – 6 2004

In re: (b) (6) [redacted]

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jonathan M. Kaufman, Esquire

ON BEHALF OF DHS: Paul K. Nishiie
Assistant Chief Counsel

CHARGE:

Order: Sec. 241(a)(1)(B), I&N Act [8 U.S.C. § 1251(a)(1)(B)] -
Entered without inspection

APPLICATION: Asylum; withholding of deportation

ORDER:

PER CURIAM. This case was last before us on May 21, 2002, when we dismissed the respondent's appeal from an Immigration Judge's decision denying the respondent's application for asylum and withholding of deportation. The Immigration Judge's decision was based on his finding that the respondent did not testify credibly regarding his asylum claim. On (b) (6) [redacted] the United States Court of Appeals for the (b)(6) [redacted] reversed the Immigration Judge's and the Board's adverse credibility finding and remanded the case for further proceedings to determine whether the respondent is otherwise eligible for asylum.

We note, as did the court, that the Immigration Judge found that, had the respondent testified credibly, he would have established past persecution on account of a protected ground. In view of the court's finding that the respondent testified credibly regarding his asylum claim, and the passage of time since the last hearing, we find that a remand is necessary. On remand, both parties will have the opportunity to present and develop evidence regarding changed country conditions in India, and how those conditions might affect the respondent's application for asylum. *See Rios v. Ashcroft*, 287 F.3d 895 (9th Cir. 2002). We note that as past persecution has been shown, the burden of proof now shifts to the Department of Homeland Security (the "DHS," formerly the Immigration and Naturalization Service) to rebut the presumption of future persecution. 8 C.F.R. § 1208.13(b)(1)(ii).

(b) (6) [redacted]

Accordingly, the decision of the Board in this case dated May 21, 2002, is vacated, and the record is remanded to the Immigration Judge for a further hearing consistent with this decision and the decision of the court.

Neil P. McC

FOR THE BOARD