IMMIGRATION COURT

[redacted]

In the Matter of: [redacted]

Case No.: [redacted]

Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on August 15, 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 in the case.

[X] The respondent was ordered removed from the United States to Columbia 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 alternative order of removal to_____.

Respondent's application for:

[ ] Asylum was ( ) granted ( ) denied ( ) withdrawn ( ) other.

[ ] Withholding of removal was ( ) granted ( ) denied ( ) withdrawn ( ) other.

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of removal [ ] deferral of removal under Article III of the Convention Against Torture was (X) granted ( ) denied ( ) withdrawn ( ) other.

[ ] A Waiver under section _____ was ( ) granted ( ) denied ( ) withdrawn ( ) other.

[ ] Cancellation of removal under section 240A(a)was ( ) granted ( ) denied ( ) withdrawn ( ) other.

Respondent's application for:

[ ] Cancellation under section 240A(b)(1) was ( ) granted ( ) denied ( ) withdrawn ( ) other.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.

[ ] Cancellation under section 240A(b)(2) was ( ) granted ( ) denied ( ) withdrawn ( ) other.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.

[ ] Adjustment of Status under section _____ was ( ) granted ( ) denied ( ) withdrawn ( ) other. If granted, it was ordered that respondent be issued all appropriate documents necessary to give effect to this order.

[ ] Respondent's status was rescinded under section 246.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: August 15, 2007

Michael J. Yamaguchi
Immigration Judge

Appeal waived Reserved : 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 [X] ALIEN's ATT/REP [X] DHS

DATE: 8/15/07 BY: COURT STAFF _____ klf

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] **Biometrics Served** [ ] Other Q6

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Files: (b) (6)

Date:

FEB 26 2007

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Stephen Shaiken, Esquire

ON BEHALF OF DHS: Patricia Spaletta
Assistant Chief Counsel

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 (both respondents)

APPLICATION: Withholding of removal under the Convention Against Torture

This case was last before us on May 22, 2003, when we dismissed the respondents' appeal of an Immigration Judge's denial of their applications for asylum and withholding of removal pursuant to sections 208 and 241(b)(3) of the Immigration and Nationality Act ("Act"), and sustained the Department of Homeland Security's ("DHS") appeal of the Immigration Judge's grant of withholding of removal under the Convention Against Torture to the respondents. In sustaining the DHS' appeal, we applied the standard set forth in *Matter of S-V-*, 22 I&N Dec. 1306 (BIA 2000) (to demonstrate acquiescence an alien must do more than show that officials are simply aware of the activity constituting torture yet are powerless to stop it), in determining that the government of Colombia was not "acquiescing" in the activities of the drug traffickers who sought to harm the lead respondent and therefore the respondent had not established that it was "more likely than not" that he would be in danger of being subjected to torture if returned to Colombia. Subsequent to our May 22, 2003, decision, the United States Court of Appeals for the (b) (6) issued a decision overruling the standard of acquiescence set forth in *Matter of S-V-*, *supra*. *See* (b) (6) *v. Ashcroft*, (b) (6) . In a decision dated (b) (6) the (b) (6) remanded proceedings to us to reconsider the facts of the respondent's case under the standard for acquiescence set forth in (b) (6) *supra*.[1]

[1] We note that the respondents are husband and wife. The wife, who did not file a separate application for asylum, is a derivative of her husband's asylum claim. Hereinafter, our references to "the respondent" refer solely to Mr. (b) (6) as there is no derivative protection available to Ms. (b) (6) under the Convention Against Torture.

In (b) (6) at (b) (6) *supra,* the Court determined that under the Convention Against Torture, a determination of the "acquiescence" of a public official requires a two-prong test: first, that the public official, prior to the activity constituting torture," have *awareness* of such activity," and second, "thereafter breach his or her legal responsibility to intervene to prevent such activity." 8 C.F.R. § 1208.18(a)(7) (*emphasis added*). In the present case, the respondent fears that if he is returned to Colombia he will be killed by drug traffickers because of his refusal to participate in a scheme to launder money and because he owes them a great sum of money. The respondent claims that the public officials who are in the position to protect the respondent are corrupt, have been infiltrated by narcotics traffickers, and are thoroughly complicit in their cooperation with drug traffickers.

As we stated in our May 22, 2003, decision, the evidence of record indicates that the government of Colombia is aware of situations like those described by the respondent, in which public officers may be influenced by drug traffickers and are subject to corruption (Bd. Dec. at 3; Exh. 4, United States Department of State, Bureau of Democracy, Human Rights and Labor, Colombia - *Profile of Asylum Claims and Country Conditions* (June 1997). Thus, the respondent has met the first prong of the two-part test for "acquiescence" articulated in *Zheng, supra.* However, the evidence of country conditions before us also indicates that the Colombian government has taken some measures to combat such corruption (Exhs. 3-K, 4). Given the staleness of the record before us, we find it necessary to remand the record to the Immigration Judge in order that additional evidence be presented by the parties regarding the second prong of the acquiescence test set forth in *Zheng, supra*: whether the Colombian government would breach their legal responsibility by failing to intervene to protect the respondent.

Accordingly, we vacate that portion of our previous order in which we sustained the DHS' appeal of the grant of withholding of removal under the Convention Against Torture, and will remand the record to the Immigration Judge for the sole purpose of allowing the parties to present evidence and testimony with regard to the second prong of the "acquiescence" test set forth in *Zheng, supra,* and for the issuance of a decision with findings on that issue and whether the respondent has established that it is "more likely than not" that he would be tortured if removed to Colombia.

Finally, as the Convention Against Torture does not afford the respondent's wife a derivative form of protection through her husband, we will remand the record to the Immigration Judge with regard to respondent (b) (6) solely for the purpose of entering an order of removal. *See Molina-Camacho v. Ashcroft*, 393 F.3d 937 (9th Cir. 2004). Accordingly, the following orders will be entered.

ORDER: The portion of our May 22, 2003, order sustaining the DHS' appeal of the Immigration Judge's grant of withholding of removal is vacated.

FURTHER ORDER: The record is remanded for further proceedings consistent with this decision for respondent (b) (6)

M

FURTHER ORDER: The record is remanded to the Immigration Judge to render an order of removal with regard to respondent (b) (6)

Brian M O'Leary
FOR THE BOARD