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:

In re: (b) (6)

SEP 16 2008

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Heith M. Kaneshige, Assistant Chief Counsel

ORDER:

PER CURIAM. This Board has been advised that the Department of Homeland Security's (DHS) appeal has been withdrawn. *See* 8 C.F.R. § 1003.4. Since there is nothing now pending before this Board, the record is returned to the Immigration Court without further action.

FOR THE BOARD

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

File No (b) (6)

(b) (6)
Respondent

Date: May 15, 2008

Docket: (b) (6)

IN REMOVAL PROCEEDINGS

ON BEHALF OF THE RESPONDENT:

Jisheng Li, Esq.
(b) (6)

ON BEHALF OF THE SERVICE:

Heith Kaneshige, Asst. Chief Counsel
Department of Homeland Security
(b) (6)

ORDER ADMINISTRATIVELY RETURNING RECORD TO BIA

This Judge has conducted a status conference with attorney for Respondent, Jisheng Li, Esq. and Assistant Chief Counsel Heith Kaneshige. Both waived presence for the preparation of another oral decision, since the cassette tape for the original decision did not record properly. This Judge has done her best to recall the decision and prepared a new one as close to the original as possible. Neither party had any additional requests.

Dayna Beamer
Immigration Judge

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

File A (b) (6)

May 15, 2008

In the Matter of

(b) (6)

Respondent

IN REMOVAL PROCEEDINGS

CHARGE: Section 212(A)(7)(A)(i)(I) Immigration and Nationality Act - intending immigrant not in possession of valid immigrant visa; Section 212(a)(4)(A) Immigration and Nationality Act - alien likely to become a public charge.

APPLICATIONS: Section 208(a) Immigration and Nationality Act - asylum; Section 241(b)(3) Immigration and Nationality Act - withholding of removal; United Nations Convention Against Torture.

ON BEHALF OF THE RESPONDENT:

Jisheng Li, Esquire

ON BEHALF OF THE DEPARTMENT OF HOMELAND SECURITY:

Heith Kaneshige, Esquire
Assistant Chief Counsel

ORAL DECISION OF THE IMMIGRATION JUDGE

On April 21, 2004, the Board of Immigration Appeals issued a decision remanding this case for the consideration of issues raised in that order relating to certain questions of fact and new law. All of this related to a decision by an Immigration Judge in (b) (6) dated May 31, 2000. See Exhibit 4. Since respondent had requested a change of venue to (b) (6) the

remand was heard in (b) (6) A decision had been issued for publication by the United States Court of Appeals for the (b) (6) (b) (6) relating to this case. See Exhibits 6, 7.

After the venue was moved to (b) (6) on December 12, 2006 as shown at Exhibit 10, respondent filed at Exhibit 12 another Form I-589 requesting all forms of relief for a new claim arising after the remand. By the completion of the hearing, Exhibits 1 through and including 18 had been received. At the conclusion of testimony on July 19, 2007, and with the Department reporting that background checks were complete, a decision was issued granting asylum and also granting withholding of removal from China and Torture Convention relief from China. The Department reserved appeal and an oral decision was dictated. However, the cassette tape did not record the entire decision and, in fact, only the very beginning of the decision was taped. This resulted in a remand dated December 19, 2007, from the Board of Immigration Appeals, for that Board was the one that recognized from the transcriber that the full oral decision had not come through on the cassette tape.

After the remand, this Immigration Judge had a status conference with respondent's attorney and with the DHS attorney. Both attorneys were asked if they wanted to sit in on another oral decision which this Judge was going to prepare and both waived that opportunity. Neither party had any notes or anything to assist the Judge in recreating that decision and left it to

the Court's discretion in how to proceed to replicate the decision. Thus, this Judge has again reviewed the file and will attempt to replicate the original decision as much as possible.

During a hearing on June 28, 2007, the Department argued that the scope of the remand should be quite limited in nature, whereas respondent argued that he should be allowed to present a new claim. Ultimately, the decision was made by this Court to allow respondent to present evidence on the new claim as well as to cover the information specifically stated in the April 21, 2004 remand, which arose mainly out of the original asylum claim.

The case was then continued for testimony on July 19, 2007. Respondent was questioned as to what his current fear was in returning to China. First, respondent testified that he feared retaliation by the "snakehead" with the nickname (b) (6) (b) (6) Respondent did not know the snakehead's real name. His fear was that he had reported for some of the cases in the past that the snakehead had beat people and he reported this to the U.S. Government. Respondent testified that he also reported to the U.S. Government "how the snakehead forced people like us on the boat." And he also testified that he had not paid the money he owed the snakehead. It is not disputed that there was a prosecution case arising out of respondent's testimony relating to his travel from China to Guam, landing on about April 17, 1999. This was during the time that a large number of boats from

China were bringing people to Guam.

Respondent also testified that he knows that this smuggler is still operating because the daughter of his village head, after graduation from high school, was helped by this alien smuggler to get her to Japan in 2003. Respondent also said there was one of his classmates who in the year 2005 was smuggled to Australia by the same snakehead. He explained that the crackdown on human traffickers in China was by order from the central government, but said that the local government did not implement it. The "big shot" would not be arrested, just people that worked for him.

Respondent's other fear was that he will not have a chance to practice his religion since he has joined the Church of Jesus Christ of Latter Day Saints. Respondent testified credibly that he became a member of the church and on January 21, 2007, was baptized.

There was also evidence in the record that respondent's parents have both arrived in the United States and that they either are in proceedings or have outstanding removal orders issued against them.

Turning back to testimony about religion, respondent testified that he started attending this church in November 2006 and found himself "totally changed" and "very peaceful." He stated that he practices his religion by going to church mostly on Sundays. Respondent has also married on January 17, 2007, and

she is also a Mormon. Respondent said that his wife has an alien registration card. They also have a U.S. citizen child, born on (b) (6) named (b) (6) Respondent corroborated his claim with evidence from his church and from his wife. See Exhibits 14, 13.

The Court finds that respondent is credible about his conversion to becoming a Mormon. The record also appears to establish that the Country Reports are consistent with respondent's argument that Mormons in China who are Chinese citizens have restrictions on their religious freedom. Respondent testified that he believes the Chinese government forbids his church. He was asked how he knew this and said that before he joined the church, a missionary told him about the relationship between the Mormon church and the Chinese government. Respondent was told if they ever do any preaching in China, they will be arrested. He said to attend the Mormon church you have to be an American citizen or holding an American passport.

Turning to the religious persecution claim, the Court finds that under these circumstances, it does appear permissible to allow respondent to bring forward the religious claim because the events happened in the United States long after he was placed in proceedings in 1999. The Court also finds that respondent is credible in describing his conversion to his new faith. This is not a case of past persecution since respondent was not active in

any religion when he was in China.

However, the Court finds that based upon respondent's testimony and the Country Reports filed at Exhibit 16, that respondent has established a well-founded fear of future persecution based upon religion if he returns to China now. There is no reason to deny asylum as a matter of discretion since the respondent has shown great equities through his lawful permanent resident spouse and U.S. citizen daughter along with membership in his church.

The evidence is also clear that the respondent was a witness in Guam for the U.S. Government in the smuggling prosecution cases. This is discussed beginning at page 63 of the record of proceedings.

Given the lack of religious freedom for individuals who are Chinese citizens who wish to actively participate in the Church of Jesus Christ of Latter Day Saints, the Court finds that respondent has also met his burden of proof for withholding of removal on this issue. It is well-known that part of the activities of this church are to gather together as a community, primarily on Sundays, but also on other days, and this normally involves entire families. There is also an active part of this religion which involves spreading the faith and indeed, young people often go into missionary service for one year if they are selected. That would not be permitted in China under the current state of human rights affairs as shown by the Country Reports.

The Court has also considered the questions raised specifically in the remand regarding making factual determinations including the level of awareness of Chinese officials regarding the treatment of smugglers towards those who have been trafficked, including any willful blindness exhibited by government officials towards such treatment. At Exhibit 18, the Department has provided some information about Chinese authorities' attempts to prosecute alien smugglers or human traffickers.

One of the articles at Exhibit 18 arises from a case in Fuzhou, Fujian, China. At Exhibit 17, the Department reported through an FBI document the case of a "snakehead queen" being sentenced to 35 years in a United States District Court. This case is actually similar to the sort of case in which respondent testified for the U.S. Government. Respondent testified candidly that he had not been contacted by anyone from a snakehead organization while he was living in New York. Respondent and his wife are, however, both from Fujian Province. Respondent testified that he was not able to continue his education in China because his parents had violated population control regulations by having three children. Respondent only had eight years of education in China.

Based upon the record, the respondent does not appear to be someone from a well-connected or wealthy family in China which might help him to protect himself from the snakeheads in

his area. The Court finds that based upon the State Department Reports and the information from the respondent himself and the information contained within the decision of the (b) (6) Court of Appeals filed (b) (6) that respondent has met his burden of proof to show that he should be granted withholding of removal based upon the Torture Convention as well. 8 C.F.R. 1208.16, withholding of removal under Section 241(b)(3)(B) of the Act, and withholding of removal under the Convention Against Torture.

Respondent has established that it is more likely than not that he would be tortured if removed to the proposed country by the human traffickers against whom he testified. There is not enough evidence to support his own credible testimony that the operation is still in existence in his home province. This means that the Chinese government may have taken action against some human traffickers, but not against (b) (6), the person that respondent fears the most and who is the boss of the snakehead operation which he used to come to Guam. Accordingly, the following orders shall be entered:

ORDER

IT IS HEREBY ORDERED that the application for asylum, for withholding of removal under Section 241 of the Act, and for withholding pursuant to the United Nations Torture Convention are all granted. It is previously found that respondent is removable

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to China, but withholding and Torture Convention withholding are both granted from China.

DAYNA BEAMER
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before DAYNA BEAMER in the matter of:

(b) (6)

(b) (6)

was held as herein appears, and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

Susan Ardoin

Susan Ardoin (Transcriber)

Deposition Services, Inc.
6245 Executive Boulevard
Rockville, Maryland 20852
(301) 881-3344

June 9, 2008
(Completion Date)

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6) Date: DEC 19 2007

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Heith M. Kaneshige
Assistant Chief Counsel

The Department of Homeland Security (DHS) has appealed the Immigration Judge's decision rendered on July 19, 2007. For reasons that appear to arise from defective or incomplete recording, the record before the Board does not include a full oral decision in this matter setting out the reasons for the Immigration Judge's decision. Accordingly, the record will be returned to the Immigration Judge for preparation of a full decision. *See Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999). Upon preparation of the full decision, the Immigration Judge shall issue an order administratively returning the record to the Board. The Immigration Judge shall serve the administrative return order on the respondent and the Department of Homeland Security (DHS). The Board will thereafter give the parties an opportunity to submit briefs in accordance with the regulations.

ORDER: The record is returned to the Immigration Court for further action as appropriate and certification to the Board by the Immigration Judge thereafter.

FOR THE BOARD

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

In the Matter of:

(b) (6)
(Respondent)

Case No.: A76 280 679
Docket: (b) (6)
Date: July 19, 2007

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE REMAND

This is a summary of the oral decision 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.

[ ] Respondent was ordered removed from the United States to (Previously found - China)

[ ] 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 of a bond in the amount of $ _____ within 5 business days and with an alternate order of removal to _____. Respondent advised of limitations on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

[ ] Respondent's application for cancellation of removal under section 240A (a) was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's application for cancellation of removal under section 240A (b) was ( ) granted ( ) denied ( ) withdrawn ( ) reserved.

[ ] Respondent's application for a waiver under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's application for adjustment of status under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn.

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

[✓] Respondent's application for asylum was (✓) granted ( ) denied ( ) withdrawn. If asylum granted, see Bulletin Board for Benefits and Responsibilities.

[✓] Respondent's application for section 241 withholding of removal was (✓) granted ( ) denied ( ) withdrawn. from China

[✓] Withholding of Removal/~~Deferral of Removal~~ under UN Torture Convention was (✓) granted ( ) denied ( ) withdrawn. from China

[✓] Your application is granted; you must contact DHS for issuance of new documents.

[ ] Proceedings were terminated.

[ ] _____.

Dayna Beamer
DAYNA BEAMER
Immigration Judge

Appeal: ~~Reserved~~/ Waived (Alien /~~DHS~~/Both)
Appeal to BIA due: August 20, 2007
_____ Appeal packet provided HK Post Order Instructions provided

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6)

Date: APR 21 2004

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jisheng Li, Esquire

ON BEHALF OF DHS: Chuck Redman
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

Sec. 212(a)(4), I&N Act [8 U.S.C. § 1182(a)(4)] - Likely to become a public charge[1]

APPLICATION: Protection under the Convention Against Torture

ORDER:

PER CURIAM. This matter is before the Board on remand from the United States Court of Appeals for the (b) (6) *See* (b) (6) sets forth an interpretation of the term "acquiescence," as contemplated under the Convention Against Torture ("CAT"). *See* 8 C.F.R. §§ 1208.16-18 (2004); (b) (6)

In (b) (6) *supra*, the (b) (6) referenced four articles contained on the Department of State website which may be relevant to the factual question of whether or not Chinese officials are "aware" of possible harm to individuals who are are smuggled into the United States, and whether or not any "willful blindness" on the part of such officials constitutes "acquiescence" under the CAT. *See* 332 F.2d at 1197 n.10. Although these articles were not part of the prior record in this case, the (b) (6) noted that "[g]iven that the regulations implementing the [CAT] provide that 'all evidence relevant to the possibility of future torture shall be considered,' . . . it would further the purposes of the [CAT] . . . to supplement the record with such material information" *See* (b) (6) (b) (6) (discussing the website, and noting that the "last visit" was May 30, 2003) (internal citation omitted). Subsequent to (b) (6) the parties in this matter submitted more than the articles referenced by the (b) (6) Some of these articles and website citations were provided to

[1] This charge was not sustained.

contrast, if not outright refute, certain points raised by the articles cited in (b) (6) *supra*. The task of the Board, however, is not to make factual findings and determinations of evidentiary weight. *Compare* 8 C.F.R. § 1003.1(d)(3)(ii) *with* 8 C.F.R. § 1003.1(d)(3)(i) (2004). *Cf. Matter of Fedorenko*, 19 I&N Dec. 57, 74 (BIA 1984).

Under (b) (6) *supra*, there are now critical factual questions to be decided. These questions include the extent of any efforts on the part of the Chinese government to combat smuggling rings, and the level, if any, of significant corruption and collusion between government officials and smugglers. Other factual determinations might include the level of awareness of Chinese officials regarding the treatment by smugglers towards those who are trafficked, including any willful blindness exhibited by such government officials towards such treatment. These questions must not be answered by an appellate body such as the Board, but must be first considered by a finder of fact. The Immigration Judge below should take testimony and/or consider any and all relevant evidence presented by the parties, and give weight as deemed appropriate. Once factual findings are made regarding the questions raised by (b) (6) *supra*, the Board could then properly review those findings, and proceed accordingly, if the matter is appealed or certified. Consequently, the matter will be remanded to the Immigration Judge below for consideration of the issues discussed in this order, as well as by the (b) (6) precedent decision on the same issues.

Frederick D Hess

FOR THE BOARD