IMMIGRATION COURT

(b) (6)

In the Matter of

(b) (6)

Case (b) (6)

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 9/21/05. 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.

[ ] The respondent was ordered removed from the United States 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 $_____ by _____ for each Respondent.
with an alternative order of removal to _____.
[✓] Respondent's application for asylum was (✓) granted ( ) denied ( ) withdrawn ( ) other.
[ ] Respondent's application for withholding of removal was ( ) granted ( ) denied ( ) withdrawn ( ) other.
[ ] Respondent's application for cancellation of removal under section 240A(a) was ( ) granted ( ) denied ( ) withdrawn ( ) other.
[ ] Respondent's application for cancellation of removal under section 240A(b) was ( ) granted ( ) denied ( ) withdrawn ( ) other.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[ ] Respondent's application for a waiver under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn ( ) other.
[ ] Respondent's application for adjustment of status under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn ( ) other.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[ ] Respondent's status was rescinded under section 246 of the INA.
[ ] 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.
[ ] Relief under Convention Against Torture( )granted ( )denied ( )withdrawn
[ ] Other: _____

(Waived) Appeal: A / I ~~B~~ N/A
Appeal due by: N/A

Phan-Quang Tue
Immigration Judge

Date: 9/21/05

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL [ ] PERSONAL SERVICE [✓]
TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [✓] ALIEN'S ATTY/REP [✓] INS
DATE: 9/22/05 BY: COURT STAFF
Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ]

IMMIGRATION COURT

(b) (6)

In the Matter of

(b) (6)

Respondent

Case (b) (6)

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on OCTOBER 7, 2004. 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.

[ ] The respondent was ordered removed from the United States 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 $_____ by _____ for each Respondent.
with an alternative order of removal to_____.
[✓] Respondent's application for asylum was (✓ granted ( ) denied ( ) withdrawn ( ) other.
[✓] Respondent's application for withholding of removal was (✓ granted ( ) denied ( ) withdrawn ( ) other.
[ ] Respondent's application for cancellation of removal under section 240A(a) was ( ) granted ( ) denied ( ) withdrawn ( ) other.
[ ] Respondent's application for cancellation of removal under section 240A(b) 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 application for a waiver under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn ( ) other.
[ ] Respondent's application for adjustment of status under section _____ of the INA 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 of the INA.
[ ] 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.
[ ] Relief under Convention Against Torture( )granted ( )denied ( )withdrawn
[X] Other: BIA incorrectly remanded case after grant of asylum - grant of asylum is a final order.

(Waived) / Appeal: A / I / (B)
Appeal due by:_____

Immigration Judge

Date: 10/7/04

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL [ ] PERSONAL SERVICE [X]

TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [X] ALIEN'S ATTY/REP [X] INS

DATE: 10/7/04 BY: COURT STAFF

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ]

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

Files: (b) (6)

Date: JUN 0 3 2004

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Lizbeth A. Galdamez, Esquire

ON BEHALF OF DHS: Paul Nishiie
Assistant District 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 (A77 169 373 only)

Sec. 212(a)(6)(C)(i), I&N Act [8 U.S.C. § 1182(a)(6)(C)(i)] - Fraud or willful misrepresentation of a material fact (A77 169 374 only)

APPLICATION: Asylum; withholding of removal

ORDER:

PER CURIAM. This case was previously before us on January 13, 2000, when we dismissed the respondents' appeal from an Immigration Judge's decision denying their applications for asylum and withholding of removal.[1] On (b) (6) the United States Court of Appeals for the (b) (6)

[1] We note that on May 2, 2000, we denied the respondents' motion to reopen to seek asylum on religious grounds. Our disposition of this motion was not before the court and is not before us now.

found the female respondent eligible for asylum based on her resistance to China's population control policies. It remanded her case for us to exercise our discretion on her application for asylum. The court remanded the male respondent's case for further proceedings, noting that the record is less developed in his case.

If one starts with the premise that the female respondent is eligible for asylum, as found by the court, then we would not deny her application for asylum in the exercise of discretion. *See generally Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996). Accordingly, the Board's decision in her case dated January 13, 2000, is vacated. Her request for asylum is granted, conditioned upon an administrative determination by the Department of Homeland Security (the "DHS," formerly the Immigration and Naturalization Service) that a number is available for such a grant under section 207(a)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1157(a)(5). The respondent's application for withholding of removal is hereby granted.

The Immigration Judge consolidated the male respondent's case with that of the female respondent during the removal proceedings. As noted by the court, the male respondent's case was not well-developed before the Immigration Judge, as his case depended at least in part on that of the female respondent, whose application was denied by the Immigration Judge. The court stated that the male respondent may qualify for asylum "in his own right," noting the outstanding warrant for his arrest and his fears of future sterilization. We also note that the transcript of the male respondent's testimony appears to be incomplete, as it seems to cut off in the middle of a sentence.

We also take note of th(b) (6) recent decision in *Ma v. Ashcroft*, 361 F.3d 553 (9th Cir. 2004), which held that refugee status can be granted to "husbands whose marriages would be legally recognized, but for China's coercive family planning policies, and not only to husbands whose marriages are recognized by Chinese authorities." *Id.* at 561. The respondents in this case, however, unlike those in the *Ma* case, did not enter into a traditional marriage in China. Although they discussed marriage in China, and issued invitations to a wedding ceremony, there is in fact nothing in the record to suggest that they have ever actually married, under any circumstances.

Accordingly, the decision of the Board dated January 13, 2000, in the case of the male respondent is vacated, and the record is remanded to the Immigration Judge for a further hearing consistent with the court's decision.

FOR THE BOARD