Files: (b) (6)

Date: FEB 27 2009

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENTS: Carlos E. Estrada, Esquire

ON BEHALF OF DHS: Gwendylan Tregerman
Senior Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture; remand

The respondents are a husband and wife, both natives and citizens of Colombia whose case was last before us on April 30, 2007, when we dismissed their appeal of an Immigration Judge's denial of their applications for asylum and withholding of removal, and protection under the Convention Against Torture. The respondents filed a petition for review of our decision with the United States Court of Appeals for the (b) (6) In an order dated (b) (6) the (b) (6) (b) (6) remanded the case to the Board for further proceedings and to allow the parties to present additional evidence regarding a 5-year resident stamp and on the firm resettlement issue. The (b) (6) (b) (6) order thus returns the respondents' case appeal to the Board for further proceedings.

Subsequently, the respondents and the DHS filed a joint motion to reopen. In that motion, the parties state that the male respondent has left the United States and that the female respondent has a pending visa petition filed on her behalf by her United States citizen daughter. The parties move to sever the respondents' cases and to remand the female respondent's record to the Immigration Judge so that the female respondent can seek a continuance in order to adjust status as the beneficiary of the visa petition filed by her daughter. The male respondent's case will be severed from that of the female respondent, as they now have divergent interests. *Matter of Taerghodsi*, 16 I&N Dec. 260 (BIA 1977). The motion to reopen and remand for the female respondent will be granted. The male respondent's departure from the United States Such departure constitutes a withdrawal of the appeal and the initial decision of the Immigration Judge is final to the same extent as though no appeal had been taken. *See* 8 C.F.R. § 1003.4.

Accordingly, the following orders shall be entered:

ORDER: The respondents' cases are severed.

(b) (6)

FURTHER ORDER: The Board's April 30, 2007, decision is vacated only insofar as it pertains to the female respondent.

FURTHER ORDER: The joint motion to reopen for the female respondent is granted.

FURTHER ORDER: The female respondent's record is remanded to the Immigration Judge for further proceedings and the entry of a new decision.

FURTHER ORDER: The male respondent's appeal is withdrawn due to his departure from the United States and, as there is nothing now pending before the Board regarding his case, his record shall be returned to the Immigration Court without further action.

Brett M Parchert

FOR THE BOARD