File: (b) (6) [redacted] Date: APR 19 2004

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

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Dorothy A. Harper, Esquire

CHARGE:

Notice: Sec. 237(a)(1)(C)(i), I&N Act [8 U.S.C. § 1227(a)(1)(C)(i)] - Nonimmigrant - violated conditions of status

APPLICATION: Asylum; withholding of removal

ORDER:

PER CURIAM. In a decision dated (b) (6) [redacted] the United States Court of Appeals for the (b) (6) [redacted] found that the respondent testified credibly at her removal hearing, and therefore concluded that she suffered past persecution in China based on the fact that she was forced to have two abortions and to have an IUD inserted. The court found her eligible for asylum and withholding of removal, and remanded the case for the Board to exercise its discretion on the application for asylum.

If one starts with the premise that the 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 this case dated February 28, 2002, is vacated, the application for asylum is granted, and the removal proceedings are terminated. In view of the grant of asylum and termination of proceedings, any application for withholding of removal is moot. *See Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987).

FOR THE BOARD