IMMIGRATION COURT

(b) (6)

In the Matter of

(b) (6)

Respondent

Case No.: (b) (6)

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Aug 2, 2006. 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 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 alternate order of removal to

Respondent's application for:

[✓] Asylum was ( ) granted ( ) denied ( ) withdrawn

[ ] Withholding of removal was ( )granted ( ) denied ( ) withdrawn

[ ] A Waiver under Section ___ was ( ) granted ( ) denied ( ) withdrawn

[ ] Cancellation under Section 240A(a) was ( )granted ( )denied ( )withdrawn

Respondent's application for:

[ ] Cancellation under Section 240A(b)(1) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Cancellation under Section 240A(b)(2) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Adjustment of Status under Section ____ was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

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of removal ( ) deferral of removal under Article III of the Convention Against Torture was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's status was rescinded under section 246.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: Security checks completed as required.

Date: Aug 2, 2006

GILBERT T. GEMBACZ
Immigration Judge

Appeal: ~~Waived~~/Reserved Appeal Due By: Sept 1, 2006

T06

File: (b) (6) Date: OCT 31 2005

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Steve Paek, Esquire

ON BEHALF OF DHS: James M. Left
Assistant Chief Counsel

CHARGE:

Notice: 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

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

APPLICATION: Asylum; withholding of removal; protection under the Convention Against Torture

ORDER:

PER CURIAM. In a decision dated (b) (6), the United States Court of Appeals for the (b) (6) found that the respondent suffered both torture and past persecution in Eritrea, and concluded that the persecution was inflicted on account of the respondent's political opinion. The court further found that the presumption of future persecution had not been rebutted. The court found the respondent eligible for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). It remanded the case for the Board to exercise its discretion on the asylum application.

Pursuant to the court's decision, the Board's decision in this case dated March 12, 2003, is vacated. The respondent is eligible for asylum, dependent upon the required security checks, and the record does not reflect that a denial of asylum in the exercise of discretion is warranted. *See generally Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996). As noted above, the respondent has also been found eligible for withholding of removal from Eritrea, and for CAT protection. We note the court's suggestion that this case be assigned to a different Immigration Judge on remand.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Court for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and

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further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h). *See* Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals, 70 Fed. Reg. 4743, 4752-54 (Jan. 31, 2005).

Frederick D. Hess

FOR THE BOARD