UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

(b) (6)
(b) (6)

Case A _____

IN REMOVAL PROCEEDINGS

Respondent

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 5/21/08.
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 _____ alternative to _____.
[ ] Respondent's application for voluntary departure was granted until _____ upon posting a bond in the amount of $_____ with an alternative order of removal to _____.
[X] Respondent's application for asylum was (X) granted ( ) denied ( ) withdrawn.
[X] Respondent's application for withholding of removal was ( ) granted (X) denied ( ) withdrawn.
[X] Respondent's application for (withholding) (deferral) of removal under Article III of the Convention Against Torture is ( ) granted (X) denied ( ) withdrawn or ( ) other.
[ ] Respondent's application for cancellation of removal under section 240A(a) was ( ) granted ( ) denied ( ) withdrawn.
[ ] Respondent's application for cancellation of removal under section 240A(b) was ( ) granted ( ) denied ( ) withdrawn. 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[ ] Respondent's application for a waiver under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn or ( ) other.
[ ] Respondent's application for adjustment of status under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn. If granted, it was ordered that respondent be issued all appropriate documents necessary to give effect to this order.
[ ] 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: _____.

Date: 5/21/08
Appeal: ( ) Applicant ( ) DHS (X) Both (X) Waived
Appeal Due By: _____

Joseph Dierkes, Immigration Judge

CERTIFICATE OF SERVICE
THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: [X] ALIEN [ ] ALIEN c/o Custodial Officer [X] ALIEN's ATT/REP [X] DHS
DATE: 5/21/08 BY: COURT STAFF

Files: (b) (6)

Date: AUG 30 2007

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Daniel L. Palmquist, Esquire

ON BEHALF OF DHS: Terry M. Louie
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] -
In the United States in violation of law (all respondents)

APPLICATION: Asylum

By an order dated June 16, 2003, we sustained the Department's of Homeland Security (DHS) appeal from an Immigration Judge's decision granting the respondents' application for asylum. On October 20, 2003, we denied the respondents' motion to reconsider. The respondents sought review of our orders by the Court of Appeals for the (b) (6) (the Court). By an order dated (b) (6), the Court found that the respondents demonstrated past persecution on account of a protected ground, and remanded the case to us for further proceedings. On April 22, 2005, we remanded the matter to the Immigration Court. By an order dated December 15, 2005, an Immigration Judge granted the respondents' application for asylum, and the DHS again appealed. The DHS' appeal will be dismissed.

We adopt and affirm the December 15, 2005, decision of the Immigration Judge granting the respondents' application for asylum. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994) (noting that adoption or affirmance of a decision of an Immigration Judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those which the Immigration Judge articulated in his or her decision"). Consistent with the Court's November 10, 2004, order, the respondents are deemed to have demonstrated past persecution in their native Peru on account of a protected ground. Moreover, for the reasons discussed by the Immigration Judge, we agree that the presumption of a well-founded fear of future persecution has not been rebutted in this case despite the submission by the DHS of evidence reflecting a weakening position and influence of the Shining Path over the past several years (I.J. at 9-12). Inasmuch as we are in agreement with the Immigration Judge's decision, we affirm his decision that the respondents

are eligible for asylum and merit this form of relief in the exercise of discretion. In view of the foregoing, the following orders shall be entered.

ORDER: The DHS' appeal is dismissed.

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

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

(b) (6)

(b) (6)

(b) (6)

Case A _ _ _ _ _

Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 12/15/2005.
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 _____.
[X] Respondent's application for voluntary departure was denied and respondent was ordered removed to _____ as an alternate to _____.
[ ] Respondent's application for voluntary departure was granted until _____ upon posting a bond in the amount of $_____ with an alternative order of removal to _____.
[X] Respondent's application for asylum was (X) granted ( ) denied ( ) withdrawn.
[X] Respondent's application for withholding of removal was ( ) granted (X) denied ( ) withdrawn.
[X] Respondent's application for (withholding) deferral of removal under Article III of the Convention Against Torture is ( ) granted (X) denied ( ) withdrawn or ( ) other.
[ ] 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. 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 or ( ) other.
[ ] Respondent's application for adjustment of status under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn. If granted, it was ordered that respondent be issued all appropriate documents necessary to give effect to this order.
[ ] 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: _____.

Date: 12/15/05
Appeal: ( ) Applicant (X) DHS ( ) Both ( ) Waived
Appeal Due By: January 17, 2006

Joseph R. Dierkes, Immigration Judge

CERTIFICATE OF SERVICE
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DATE: 12/15/05 BY: COURT STAFF

12/15/05

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 22 2005

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Daniel L. Palmquist, Esquire

ON BEHALF OF DHS: Richard Soli
Chief Counsel

APPLICATION: Asylum

ORDER:

PER CURIAM. This case was previously before the Board on June 16, 2003, when we sustained the Department of Homeland Security appeal from an Immigration Judge's decision granting the respondents' applications for asylum. We denied the respondents' motion to reconsider in a decision dated October 20, 2003. The matter is now before us pursuant to the (b) (6) decision of the United States Court of Appeals for the (b) (6). The court reversed the Board's finding that the harm the lead respondent suffered was not on account of a protected ground. The case was remanded for further consideration in light of the court's finding that the respondents had suffered past persecution. The court emphasized that, as past persecution has been shown, the burden is now on the DHS to show that conditions in Peru are sufficiently changed to rebut the presumption of past persecution.

Following the court's remand, the DHS filed a motion to remand to the Immigration Judge for further consideration of the issue of changed country conditions. The respondents have not opposed this motion. Accordingly, the decisions of the Board in this case dated June 16, 2003, and October 20, 2003, are vacated, and the record is remanded to the Immigration Judge for further proceedings consistent with the court's decision.

FOR THE BOARD

Ex. B
5/25/05