IMMIGRATION COURT

(b) (6)

In the Matter of:
Respondent

Case: (b) (6)

IN REMOVAL PROCEEDINGS

(b) (6)

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 9/25/07. 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 $_____ with an alternative order of removal to _____.
[X] Respondent's application for asylum was (X) granted ( ) denied ( ) withdrawn ( ) other.
[ ] Respondent's application for withholding of removal was ( ) granted ( ) denied ( ) withdrawn ( ) other.
[ ] Respondent's application for [ ] withholding of removal [ ] deferral of removal under Article III of the Convention Against Torture was ( )granted ( ) denied ( ) withdrawn ( ) other.
[ ] Respondent's application for cancellation of removal under section 240A(a) was ( ) granted ( ) denied ( ) withdrawn ( ) other.
[ ] Respondent's application for cancellation of removal under section 240A(b) was ( ) granted ( ) denied ( ) withdrawn ( ) other.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[ ] Respondent's application for a waiver under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn ( ) other.
[ ] Respondent's application for adjustment of status under section _____ of the INA was ( ) granted ( ) denied ( ) withdrawn ( ) other.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[ ] Respondent's status was rescinded under section 246 of the INA.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.
[ ] Other: _____

Appeal waived Reserved: A / (I) / B
Appeal due by: 10/25/07

Polly A. Webber
Immigration Judge

Date: 9/25/07

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL [ ] PERSONAL SERVICE [✓]
TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [✓] ALIEN'S ATTY/REP [✓] INS=
DATE: 9-25-07 BY: COURT STAFF _____
Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ]

File: (b) (6)

Date: NOV 17 2006

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Hardeep Singh Rai, Esquire

ON BEHALF OF DHS: Paul K. Nishie
Assistant District Counsel

CHARGE:

Notice: Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] - Inadmissible at time of entry or adjustment of status under section 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, Convention Against Torture

ORDER:

PER CURIAM. This case is before us on remand from the United States Court of Appeals for (b) (6) *v. Gonzales*, (b) (6) In a decision dated February 25, 2003, this Board affirmed without opinion an Immigration Judge's decision denying the respondent's applications for asylum and withholding of removal, and the Board also denied a motion to remand to permit the respondent to submit an application for protection under the Convention Against Torture.

In its decision, the (b) (6) found that the Immigration Judge's adverse credibility determination was not supported by substantial evidence, and remanded for a determination of whether the respondent was arrested because of terrorist activities or his imputed political beliefs. The court determined that the Immigration Judge's brief discussion of the implausibility of the respondent's testimony on this question was inadequate.

Given these findings, a remand is necessary so the Immigration Judge can address the issue of whether the respondent was arrested in part because of an imputed political opinion. If the Immigration Judge finds nexus, then past persecution has been shown as the respondent testified to considerable beatings. The respondent is entitled to a presumption of future persecution, and the burden of proof is on the Department of Homeland Security (DHS) to rebut the presumption.

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8 C.F.R. § 1208.13(b)(1)(ii). Given the age of the record, the Immigration Judge should permit the parties to submit evidence regarding whether there has been a fundamental change of circumstances in India such that the respondent no longer has a well-founded fear of persecution there. 8 C.F.R. § 1208.13(b)(1)(i)(A).

The (b) (6) affirmed the Board's determination that the respondent did not present *prima facie* evidence of his eligibility for protection under the Convention Against Torture. (b) (6) (b) (6) Remand is therefore limited to the respondent's applications for asylum and withholding of removal. Accordingly, the February 25, 2003, decision of the Board in this case is vacated as to the respondent's applications for asylum and withholding of removal and the record is remanded to the Immigration Judge for further proceedings consistent with this decision and the decision of the court.

FOR THE BOARD