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 3 606
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[ ] Respondent's application for asylum was ( )granted ( )denied ( )withdrawn.

[ ] Respondent's application for withholding of removal was ( )granted ( )denied ( )withdrawn.

[ ] Respondent's application for cancellation of removal under section 240A(a) was ( )granted ( )denied ( )withdrawn.

[ ] Respondent's application for cancellation of removal was (granted under section 240A(b)(1) ( ) granted under section 240A(b)(2) ( ) denied ( ) withdrawn.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[ ] Respondent's application for a waiver under section _____ of the INA was ( )granted ( )denied ( )withdrawn or ( )other.

[ ] Respondent's application for adjustment of status under section _____ of the INA was ( )granted ( )denied ( )withdrawn.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[ ] Respondent's status was rescinded under section 246.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 COMPLETE

Date: March 6, 2006

Appeal: Waived/Reserved Appeal Due By:

BY BOTH

KENNETH JOSEPHSON
Immigration Judge

File: (b) (6) Date:

In re: (b) (6) JAN - 6 2005

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Timothy M. Greene, Esquire

ON BEHALF OF DHS: Thomas P. Molloy
Assistant District Counsel

APPLICATION: Cancellation of removal

ORDER:

PER CURIAM. This case is presently before us pursuant to the (b) (6) decision of the United States Court of Appeals for the (b) (6) The court noted that it was unclear whether the Board considered the respondent's brief in making its September 23, 2002, decision in this case. In that decision, the Board found that the respondent had not shown that his United States citizen daughter would suffer exceptional and extremely unusual hardship if the respondent is removed to Mexico. However, the Board did not discuss the respondent's argument that the Immigration Judge should have granted a continuance in his case. The court remanded the case for further consideration by the Board, after ensuring that the record before us is complete.

Following the remand, we solicited briefs from the parties. The respondent has filed a brief on remand. The Department of Homeland Security has not filed a brief. The record will be remanded to the Immigration Judge.

With regard to the continuance, the respondent asserts that the Immigration Judge denied him due process when he held the individual hearing in his case just 13 days after the master calendar hearing. The respondent agreed to the short time to prepare in exchange for being released on a low bond, so that he could gather support for his application (Tr. at 63). However, he asserts that he needed more time to prepare for the merits hearing because he was attempting to establish the special needs of his young citizen child, in connection with his application for nonpermanent resident cancellation of removal.

There is evidence in the record which reflects that the respondent's daughter was receiving special education services due to various developmental delays. The child was in first grade at the

time of the November 1999 hearing. The Immigration Judge repeatedly mentioned his desire to have some evidence regarding the child's prognosis. We find that, given all the circumstances of this case, the Immigration Judge should have granted the respondent's request for a further continuance.

Although the Immigration Judge did grant brief continuances after initially setting the merits hearing for 6 days after the master calendar, the hearing on the merits went forward, over the respondent's protests, just 13 days after the master calendar. The respondent is an individual who has lived in this country for many years. He is the father of a citizen child who at the time of the 1999 hearing had sufficient problems to qualify for special education services. The respondent appears to be the sole support of the child, as his wife, the child's mother, has left them(Tr. at 50-51). A further continuance to ensure that the respondent had adequate time to fully prepare for his hearing should have been granted. The respondent will also have the opportunity at a further hearing to provide an update on his daughter's progress and prognosis.

Accordingly, we find that a remand is necessary. The decision of the Board dated September 23, 2002, is therefore vacated and the record is remanded to the Immigration Judge for a further hearing on the respondent's application for cancellation of removal.

FOR THE BOARD