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 Feb 8, 2007. 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:

[X] Asylum was ( ) granted ( ) denied ( ) withdrawn

[ ] Withholding of removal was ( )granted ( ) denied ( ) withdrawn

[ ] A Waiver under Section _____ was ( ) granted ( ) denied ( ) withdrawn

[ ] Cancellation under Section 240A(a) was ( )granted ( )denied ( )withdrawn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[ ] Cancellation under Section 240A(b)(1) was ( ) granted ( ) denied ( ) withdrawn.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[ ] Cancellation under Section 240A(b)(2) was ( ) granted ( ) denied ( ) withdrawn, If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Adjustment of Status under Section _____ was ( ) granted ( ) denied ( ) withdrawn.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of removal ( ) deferral of removal under Article III of the Convention Against Torture was ( ) granted ( ) denied ( ) withdrawn.

[ ] Respondent's status was rescinded under section 246.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: _____

Date: Feb 8, 2007

EUGENE PUGLIESE
Immigration Judge

Appeal: Waived ~~Reserved~~ Appeal Due By:

LME

File: (b) (6)

Date:

In re: (b) (6)

JUN 19 2006

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Philippe Weisz, Esquire

ON BEHALF OF DHS: Charles Parker, Jr.
District 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

This case comes before us on remand from the United States Court of Appeals for the (b) (6) In a decision dated November 17, 2003, we had reversed the Immigration Judge's adverse credibility finding, but agreed with the Immigration Judge's decision finding that the respondent failed to meet his burden of establishing eligibility for asylum, withholding of removal, and for relief under the Convention Against Torture. The (b) (6) found that our decision was based on factual conclusions which were unsupported by the record: (1) that we incorrectly found that the respondent, a native and citizen of Colombia, was alleging he would be persecuted based on general unrest in his native country, and (2) that, in denying the respondent's claim for asylum, we incorrectly relied on the fact that the respondent's family members remain in Colombia unharmed. *See* (b) (6) *v. Gonzales*, (b) (6) With regard to both findings, the (b) (6) noted that we failed to address the specific threats that the respondent had received from paramilitary groups believing that the respondent collaborated with the guerillas. *Id.* Assuming that on remand we find the respondent eligible for asylum, the Court also encouraged a more explicit determination as to the respondent's potential for relocation in Colombia, an issue which the Court indicated we had not adequately addressed on appeal. *Id.* at 303.

As noted by the (b) (6) we previously found the respondent credible and reversed the Immigration Judge's decision finding otherwise. In addition, we agreed with the Immigration Judge that the respondent had not established past persecution, a determination which was apparently not challenged on

appeal to the (b) (6) *Id.* at (b) (6) n.2. Therefore, the sole issue to be decided is whether the respondent established a well-founded fear of future persecution if removed to Colombia.[1]

The (b) (6) has provided a summary of the facts in its decision; we find it unnecessary to reiterate those facts except in brief. The respondent lived in Cali for approximately 5 years when he moved to Cisneros in 1998. In Cisneros, he attended meetings of a community group, the purpose of which was to ask for governmental support for community issues and for protection from the paramilitaries. The respondent stopped attending, however, because paramilitary groups said they would kill anyone who attended. In 2000, the respondent received a threat from one of the groups, accusing him of collaboration with the guerillas, and was informed by (b) (6) that men had come to their home asking for him; members of the paramilitary groups destroyed a police station, killed police officers, and conducted a massacre during this time. Although the respondent attempted to obtain protection from various governmental officials in his local area, he was unsuccessful. The respondent left Cisneros, returning to Cali where he also attempted to obtain governmental protection. He returned to Cisneros to see (b) (6) who was ill, but soon left because of paramilitary presence in the area. Based on this evidence, the respondent has established that he has both a subjective and objective fear of persecution in Cisneros. The respondent was singled out by the paramilitaries and the documentary evidence of record supports the respondent's assertions. Furthermore, it is clear from the respondent's testimony that the government, both in Cisneros and in Cali, was unwilling or unable to provide the respondent with protection. The only question remaining is whether the respondent could conceivably relocate to Cali, in which he has not experienced any threats, or to some other area of Colombia. *See* 8 C.F.R. § 1208.13(b)(2)(ii) (2006).

As pointed out by the (b) (6) the fact that the respondent was able to reside in Cali prior to living in Cisneros is irrelevant to whether relocation to Cali (or another part of Columbia) is reasonable after having received the threats. *Id.* at 303. Furthermore, the respondent's "brief residence in Cali, which was apparently without incident, prior to his departure from Colombia in 2001 [does not] determine[] whether he has a reasonable possibility of relocating to Cali." *Id.* The general factors to consider include: "whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties." 8 C.F.R. § 1208.13(b)(3). However, as correctly stated by the respondent on appeal, relocation within Colombia is presumptively unreasonable for him because the AUC Calima Front paramilitary organization has been linked to the Colombian military; where the persecutor is governmental, internal resettlement is presumed unreasonable (Respondent's Br. at 13; *see* Exhs. 6 & 7). *See* 8 C.F.R. §§ 1208.13(b)(3)(i), (ii). The country information of record does not indicate that the paramilitary groups are limited to certain areas of Colombia (Exhs. 6 & 7). Furthermore, as noted above, the respondent sought governmental protection and was unable to receive any help. We are unable to conclude that the DHS has rebutted by a preponderance of the evidence the presumption that, under all the circumstances, it would be unreasonable for the respondent to relocate. 8 C.F.R. § 1208.13(b)(3)(ii); *see Gambashidze v. Ashcroft*, 381 F.3d 187 (3d Cir. 2004) (construing a similar provision applying to withholding of removal, the Court

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[1] The respondent also did not challenge the denial of withholding of removal or relief under the Convention Against Torture and the (b) (6) deemed those claims waived. *Id.* at 299 n.3.

(b) (6)

found that having previously resided in an area, while providing evidence that it was reasonable to relocate, did not provide sufficient evidence to meet the DHS's burden of establishing that such relocation would be successful or viable). Accordingly, the Immigration Judge's decision denying the respondent's application for asylum, and our previous decision affirming, are vacated.

ORDER: The respondent's appeal of the Immigration Judge's decision denying his application for asylum is vacated.

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 Department of Homeland Security 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).

Patricia M. Cole

FOR THE BOARD