U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6)

Date: APR 0 6 2004

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Curtis F. Pierce, Esquire

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

APPLICATION: Asylum; withholding of removal

ORDER:

PER CURIAM. In a decision dated February 18, 2003, the United States Court of Appeals for the (b) (6) found that the respondent, an ethnic Albanian from the Kosovo region of Serbia, has a well-founded fear of persecution in Serbia. It upheld the Immigration Judge's and the Board's finding that the respondent had not shown that it was more likely than not that he would be persecuted upon return to his homeland, and that he therefore did not qualify for withholding of removal. The court remanded the case for the Board to consider any changes in country conditions in exercising our discretion on the respondent's application for asylum.

We note that the regulations provide that an alien who has suffered past persecution may be denied asylum in the exercise of discretion where there has been a fundamental change in circumstances, such that the respondent no longer has a well-founded fear of persecution. 8 C.F.R. § 1208.13(b)(1)(i)(A). The regulations do not provide an equivalent reason for a discretionary denial in cases where the respondent has been found to have a well-founded fear of future persecution. Rather, the regulations simply state that an alien "may qualify as a refugee...because he or she has a well-founded fear of future persecution." 8 C.F.R. § 1208.13(b).

(b) (6)

If one starts with the premise that the respondent is eligible for asylum based on a well-founded fear of future persecution, as found by the court, then we would not deny his application for asylum in the exercise of discretion. *See generally Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996). Accordingly, the Board's decision in this case dated September 18, 2001, is vacated, the application for asylum is granted, and the removal proceedings are terminated.

FOR THE BOARD