U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

(b) (6)

File (b) (6)

In the Matter of

In Exclusion Proceedings

(b) (6)
Applicant

CHARGE: I&N Act Section:
212(a)(6)(C)(i), 212(a)(7)(A)(i)(I),
212(a)(7)(B)(i)(I), 212(a)(7)(B)(i)(II)
APPLICATION:

ON BEHALF OF APPLICANT:
RANDALL L. ESQ JOHNSON

ON BEHALF OF THE SERVICE:

WYCUIE BOUKNIGHT, ESQ.

DECISION OF THE IMMIGRATION JUDGE

It is charged in the Form I-122 that the applicant is a native and citizen of GHANA. Who made application for Admission to the United States on or about July 19, 1994 and is charged with being excludable under Section 212(a)(6)(C)(i), 212(a)(7)(A)(i)(I), 212(a)(7)(B)(i)(I), 212(a)(7)(B)(i)(II) of the Act. The Form I-122 was served upon the applicant.

A failure to attend the hearing at the time and place designated may result in a determination being made by the Immigration Judge in the applicant's absence. The applicant was duly notified of the time and place of the hearing, but without reasonable cause failed to appear on Apr 27, 2006.

The law provides inter alia that the Immigration Judge shall have the power to conduct in absentia hearings, "If any alien has been given a reasonable opportunity to be present at a proceeding under this section, and without reasonable cause fails or refuses to attend ... the (immigration judge) may proceed to a determination in like manner as if the alien were present. The Supreme Court in INS v. Lopez-Mendoza, 104 S. Ct. 3479 (1984), stated "The alien must be given a reasonable opportunity to be present at the proceeding, but if the alien fails to avail himself of the opportunity, the hearing my proceed in his absence." See also Matter of Charles, 16 I&N Dec. 241 (BIA 1977); Matter of Marallag, 13 I&N Dec. 775 (BIA 1971).

Applicant has failed to appear and failed to establish his eligibility for admission or any discretionary relief. I will deny all the applications for lack of prosecution. Matter of Jean, 17 I&N Dec. 100 (BIA 1979); Matter of Jaliawala,14 I&N Dec. 664 (BIA 1974).

L03

See also Matter of Perez, Int. Dec. 3025 (BIA March 13, 1987); and Matter of Patel, Int. Dec. 2993 (BIA September 23, 1985).

ORDER: IT IS ORDERED that applicant be excluded from the United States ~~to~~ under Section 212(a)(7)(A)(i)(II) only ~~on the charge(s) contained in the Form I-122~~.

Date: May 2, 2006

NOEL A. FERRIS
Immigration Judge

@U

File: (b) (6) Date: SEP 2 8 2005

In re: (b) (6)

IN EXCLUSION PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANT: Randall L. Johnson, Esquire

APPLICATION: Reopening

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 found that the Immigration Judge acted arbitrarily in finding that the applicant had to comply with the requirements for making a claim of ineffective assistance of counsel set forth in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), and that she should have considered the applicant's explanation for not being in the courtroom at the time of his exclusion hearing. In view of the court's conclusion that the credibility of the respondent's explanation must be considered, and if credible, it must be determined whether it provides a reasonable basis for his failure to appear, we find that a remand is necessary for the Immigration Judge to make those findings in the first instance. Accordingly, the record is remanded to the Immigration Judge for further proceedings consistent with this decision and the decision of the court.

FOR THE BOARD