



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: [REDACTED] [REDACTED]

Date of this notice: 4/20/2011

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Liebowitz, Ellen C

Falls Church, Virginia 22041

File: [REDACTED] - Dallas, TX

Date: APR 20 2011

In re: [REDACTED]

IN REMOVAL PROCEEDINGS

CERTIFICATION

ON BEHALF OF RESPONDENT: Christopher W. Helt, Esquire

ON BEHALF OF DHS: Roslyn Gonzalez
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

We will remand the record for further proceedings and for the entry of a new decision. On September 11, 1998, an Immigration Judge issued an order finding the respondent, a native and citizen of Pakistan, removable as charged. He also denied him asylum and withholding of removal. The respondent appealed this decision to the Board. On June 26, 2002, the Board returned the record to the Immigration Court because the tape containing the Immigration Judge's oral decision was missing. The Immigration Court was instructed to take such steps as were appropriate and necessary to enable preparation of a complete decision, including a new hearing if necessary, and to certify the record to the Board thereafter.

On July 15, 2002, the Immigration Judge signed a written decision denying the respondent asylum, withholding of removal, protection under the Convention Against Torture, and voluntary departure. He also found the asylum application to be frivolous. The decision was apparently served on the parties, but it was not certified to the Board. On August 14, 2009, the Immigration Court discovered the mistake, and certified the record to the Board.

The respondent has filed a brief and a motion to remand. He asserts that he did not receive a fundamentally fair hearing in 1998, and new circumstances have arisen which support a remand for an updated asylum request. The Department of Homeland Security opposes the appeal arguments and the motion, but does not explicitly address the fair hearing assertions.

We will vacate the Immigration Judge's decisions and remand the record for the following reasons. The record indicates that the Immigration Judge made inappropriate remarks during the hearing which call into question the fairness of the proceedings (*see e.g.*, Tr. at 58, 131-135). Further, the Immigration Judge's frivolous finding does not comport with our subsequently issued precedent on this issue. *See e.g., Matter of Y-L-*, 24 I&N Dec. 151 (BIA 2007). Finally, we consider that the last hearing in this case was in 1998, and the record has not been updated since that time. We will accordingly remand the record for a new hearing on the respondent's asylum application and any other relief from removal for which he can establish eligibility. Both parties may submit

[REDACTED]

relevant evidence, including the respondent's revised asylum claim as presented in his motion to remand.

Accordingly, the following orders will be entered.

ORDER: The Immigration Judge's decisions dated July 15, 2002, and September 11, 1998, are vacated.

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings consistent with this order and for the entry of a new decision.

Allen Rubowich
FOR THE BOARD