U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Rebecca D. Kruse
425 Market Street
San Francisco, CA 94105

Office of the District Counsel/SFR
P.O. Box 26449
San Francisco, CA 94126-6449

(b) (6) [redacted]

(b) (6) [redacted]

Date of this notice: 09/11/2006

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

Sincerely,

Donna Carr

Donna Carr
Acting Chief Clerk

Enclosure

Panel Members:
HOLMES, DAVID B.
HURWITZ, GERALD S.
MILLER, NEIL P.

File: (b) (6) - San Francisco

Date: SEP 11 2006

In re: (b) (6)

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENTS: Rebecca D. Kruse, Esquire

ON BEHALF OF DHS: Helen Bouras
Assistant Chief Counsel

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 (all respondents)

Lodged: Sec. 237(a)(1)(C)(i), I&N Act [8 U.S.C. § 1227(a)(1)(C)(i)] -
Nonimmigrant - violated conditions of status (75 252 666)

APPLICATION: Reconsideration

The Department of Homeland Security ("DHS") has filed a motion requesting the Board to reconsider its decision of March 29, 2006. The motion will be denied.

A motion to reconsider shall specify the errors of fact or law in the prior Board decision and shall be supported by pertinent authority. *See* 8 C.F.R. § 1003.2(b)(1). We have reviewed the contentions raised in the motion to reconsider but find that our previous decisions in these proceedings were correct. The DHS raises many of the same arguments in the motion as were raised in the appeal briefs. We considered those arguments and found them unpersuasive when viewed within the record as a whole.

The DHS now contends that the decisions in this matter conflict with the Board's 2003 unpublished decision addressing a co-defendant of the respondent[1] and the same criminal trial that was at issue here.

[1] The three respondents in this case filed individual asylum applications. However, the applications of (continued...)

(b) (6)

The DHS argues that the decisions cannot be reconciled as they now stand. The DHS further contends that because "no compelling evidence" was presented by the respondent's co-defendant to suggest that his *in absentia* proceedings were unfair, the Board must have erred in concluding that this respondent did present such evidence regarding the specific circumstances of his own proceedings. This argument is clearly unsound. The respondent had his own case, his own hearing, and his own burden to present evidence. Just as the respondent could not have been given the benefit of the evidence in a case decided 3 years earlier, he cannot be penalized because someone else did not meet his burden of proof in an entirely different proceeding. An immigration judge's decision is based upon the evidence and arguments presented at the individual hearing, and the Board reviews that evidence along with the arguments presented on appeal. The case before us now and the case decided 3 years ago involve, *inter alia*, different respondents with different backgrounds, different evidence, and different findings of fact made by the immigration judges. *See generally* 8 C.F.R. § 1003.1(d)(3) (providing the Board's scope of review). Finally, to the extent that the DHS notes that the United States Court of Appeals for the Ninth Circuit, the jurisdiction in which this matter originates, is presently considering the case of the respondent's co-defendant, this contention fails to raise an error of fact or law in our decision in the respondent's case.

The motion will be denied.[2]

ORDER: The motion is denied.

FOR THE BOARD

[1] (...continued)
respondents (b) (6) rely in part upon facts and legal arguments presented in the case of (b) (6) e motion to reconsider filed by the DHS addresses all three respondents. References to "the respondent" in this decision are t (b) (6)

[2] On March 29, 2006, we remanded the records in these cases to the Immigration Judge. The records will now be returned to the Immigration Judge for the purposes stated in the individual decisions dated March 29, 2006.