



Detail

Complaint Number: 717

Immigration Judge: (b)(6)

Complaint Received Date: 01/22/13

Current ACIJ
Fong, Thomas Y. K.
Past ACIS:

Base City
(b) (6)

Status
CLOSED

Final Action
Oral counseling

Final Action Date
01/24/13

A-Numbers(s)	Complaint Nature(s)	Complaint Source(s)
(b)(6)	Bias In-court conduct Legal	BIA

Complaint Narrative: BIA sustained a R's appeal and remanded the matter to the IJ. BIA noted that the "IJ did not conduct (b) (6) impartially, noting the specific comments by the IJ on the record in response to (Respondent's) testimony."

Complaint History	
01/22/13	Complaint referred to ACIJ
01/24/13	Oral counseling
01/29/13	Database entry created

(b) (6)



Memorandum

Subject	Date
(b) (6) (BIA January 17, 2013)	January 22, 2013

To	From
Brian O'Leary, Chief Immigration Judge	David L. Neal, Chairman
MaryBeth Keller, Assistant Chief Immigration Judge	

Attached please find a copy of the Board's decision dated January 17, 2013, and relevant portions of the record in the above-referenced matter.

The Board asked me to bring this case to your attention.

Further, the Board anticipates returning the record of proceedings for this remanded case to the Immigration Court in one week. If you wish to review the record prior to its return to the Immigration Court, please contact Suzette Henderson.

Thank you for your attention to this matter.

Attachments

Falls Church, Virginia 22041

File: A (b) (6)

Date: JAN 17 2013

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: (b) (6) 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; Convention Against Torture

The respondent, a native and citizen of China, appeals from the Immigration Judge's decision, dated August 29, 2011, denying asylum, withholding of removal, and protection under the Convention Against Torture.¹ The Department of Homeland Security (DHS) has not filed a response to the appeal, which will be sustained.

The respondent fears persecution in China on account of his adherence to the Christian religion and his membership in a particular social group. He asserts that in July 2004 he was arrested while attending his family church, and that during his 6-day detention he was beaten and interrogated (I.J. at 2-4). He further asserts that, after his wife paid a fine and he signed a pledge, he learned upon his release that he had been fired from his job (I.J. at 4).

The Immigration Judge found the respondent was not a credible witness and that he did not provide sufficient corroborating documentation (I.J. at 4-8). On the basis of these findings, the Immigration Judge held that the respondent did not show he suffered past persecution, or otherwise carry his burden to show he has a well-founded fear of future persecution or that his life or freedom would be threatened on account of a protected ground (I.J. at 8-9). The Immigration Judge also denied protection under the Convention Against Torture (I.J. at 9).

On appeal, the respondent argues his testimony was credible and that he demonstrated he suffered past persecution on account of a protected ground (Respondent's Br. at 5-10). Specifically, he asserts that the Immigration Judge's emphasis on his written statement was misplaced since he was "clearly the victim of an unscrupulous preparer" who advised him not to include details about his police interrogation; and that an inconsistency between the respondent's testimony and that of his witness, Pastor (b) (6) did not go to the heart of his claim. The respondent also asserts the Immigration Judge engaged in speculation and conjecture in finding that inconsistencies between the respondent's declaration and testimony suggested he revised his

¹ Because the respondent filed his application for asylum before May 11, 2005, it is not governed by the provisions of the REAL ID Act. See *Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006).

story, and in refusing to consider the respondent's corroborating documents because of (b) (6) belief that a high percentage of documents coming out of China are fraudulent (I.J. at 8). The respondent also asserts the Immigration Judge did not conduct (b) (6) impartially, noting the specific comments by the Immigration Judge on the record in response to his testimony (Tr. at 73). Further, the respondent argues that he showed he has a well-founded fear of persecution (Respondent's Br. at 11-12), and that he is eligible for protection under the Convention Against Torture (Respondent's Br. at 12-14).

In general, an Immigration Judge's credibility assessment will be given significant deference because he or she is in the best position to observe a witness's demeanor. *See, e.g.,* (b) (6) (b) (6) *Matter of A-S-*, 21 I&N Dec. 1106, 1111 (BIA 1998); *Matter of Teng*, 15 I&N Dec. 516, 518 (BIA 1975). Notwithstanding this deference, we find the Immigration Judge's adverse credibility finding was clearly erroneous because it is not consistent with pre-REAL ID Act law. Importantly, we agree with the respondent that a number of the inconsistencies identified by the Immigration Judge are either not supported by the record or are minor inconsistencies only, and that the Immigration Judge, at times, exceeded (b) (6) mandate to "receive and consider material and relevant evidence." *See* 8 C.F.R. § 1240.1(c).

The Immigration Judge's finding that the respondent's witness, Pastor (b) (6) testimony contradicted the respondent's claim that he was baptized in China and that he attended the church on Sundays is not supported by the record (I.J. at 7). The respondent testified that he attended the church on Sundays and that he occasionally joined a "family gathering" on Wednesday nights (Tr. at 75, 90-91). Pastor (b) (6) testimony supported these assertions. He testified that the respondent usually came on Wednesdays for the family meeting at a member's house and that he also came to the Sunday worship service at the church (Tr. at 111, 118). He asserted the respondent came to almost every Sunday and Wednesday since 2006 (Tr. at 112, 120-22, 126). Moreover, Pastor (b) (6) corroborated the respondent's assertion that he was baptized at the church in 2006 (Tr. at 113; Exh. 4). While Pastor (b) (6) did testify that if the respondent was previously baptized the church would not require another baptism (Tr. at 115), this does not necessarily mean, as the Immigration Judge appears to have found, that the church would not perform another baptism, which the respondent testified they did (Tr. at 78).

Similarly, the respondent testified that his wife "seldom" attended the house church (Tr. at 147), not that she never went, as the Immigration Judge found (I.J. at 5-6; Exh. 2, at 6). Moreover, while the Immigration Judge based (b) (6) finding, in part, on the respondent's failure to mention in his statement that police visited his home and threatened his wife and child after he left (I.J. at 6-7), we observe that the asylum statement was drafted shortly after his arrival in 2005 and that the respondent testified that his wife did not document these visits until sometime in 2006 (Tr. at 68-72).

Further, under the pre-REAL ID Act law of the United States Court of Appeals for the (b) (6) Circuit, (b) (6)

(b) (6)

(b) (6) and (b) (6) We find that the discrepancies identified between the respondent's statement and testimony

A(b) (6)

regarding his treatment during detention, i.e., whether he was slapped and kicked once or several times and whether his face turned white or red when he was choked (I.J. at 6, Tr. at 50-51, 166), are minor inconsistencies and were adequately explained by the respondent.

We also agree with the respondent that the Immigration Judge erred in refusing to consider the respondent's corroborating documents based on the Immigration Judge's own belief that fines over 500 Yuan must be paid to a bank in China and that a high percentage of documents coming out of China are fraudulent (I.J. at 8; Exh. 3, at 40-41, 42-43) and because the documents were not authenticated in accordance with 8 C.F.R. § 1287.6. First, we find the Immigration Judge improperly considered extra-record evidence without giving the respondent an opportunity to be heard on the issue. See (b) (6). Second, the regulation providing for the authentication of foreign official records in removal proceedings sets forth permissive, not mandatory, methods of foreign authentication. See 8 C.F.R. § 1287.6(b), (c). Third, as the (b) (6) Circuit has held, (b) (6).

(b) (6)

(b) (6)

see also

(b) (6)

(b) (6)

Finally,

we also agree with the respondent that the Immigration Judge, at times, employed a tone that is inconsistent with (b) (6) judicial role.

Accordingly, we will vacate the Immigration Judge's adverse credibility finding, and will remand the record for the Immigration Judge to conduct further fact-finding and to determine anew the respondent's credibility. Should the Immigration Judge find the respondent credible on remand, (b) (6) should determine in the first instance whether the respondent suffered treatment that rose to the level of past persecution and whether he has a well-founded fear of future persecution. On remand, the Immigration Judge should also reconsider the respondent's eligibility for protection under the Convention Against Torture in light of this new fact-finding. See, generally, (b) (6) (stating an Immigration Judge's ruling on the likelihood of torture is reviewed for clear error). Specifically, the Immigration Judge shall determine anew whether it is more likely than not that the respondent will be tortured at the instigation or with the acquiescence (to include the concept of willful blindness) of a public official acting in his or her official capacity if removed to China. See 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1).

In remanding this matter, we express no opinion on the outcome of the asylum application on the merits or as a matter of discretion. See *Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996). The appeal will be sustained and the following order will be entered. Accordingly, the following order will be entered.

ORDER: The respondent's appeal is sustained, the Immigration Judge's decision is vacated, and the record is remanded for further proceedings consistent with the foregoing decision and the entry of a new order.

Teresa L. Danarz

FOR THE BOARD

IMMIGRATION COURT

(b) (6)

In the Matter of: (b) (6)

Case No.: A (b) (6)

Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on August 29, 2011.

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 CHINA 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 alternative order of removal to _____.

Respondent's application for:

☒ Asylum was () granted (☒ denied () withdrawn () other.

☒ Withholding of removal was () granted (☒ denied () withdrawn () other.

☒ Respondent's application for ☒ withholding of removal ☒ deferral of removal under Article III of the Convention Against Torture was () granted (☒ denied () withdrawn () other.

☐ A Waiver under section _____ was () granted () denied () withdrawn () other.

☐ Cancellation of removal under section 240A(a) was () granted () denied () withdrawn () other.

Respondent's application for:

☐ Cancellation under section 240A(b)(1) was () granted () denied () withdrawn () other. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.

☐ Cancellation under section 240A(b)(2) was () granted () denied () withdrawn () other. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.

☐ Adjustment of Status under section _____ was () granted () denied () withdrawn () other. If granted, it was ordered that respondent be issued all appropriate documents necessary to give effect to this order.

☐ 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: See Waiver Decision attached hereto

Date: 8-29-11

(b) (6)

Appeal waived/Reserved A/I/BAppeal due by: See Waiver Decision

Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: ☐ ALIEN ☐ ALIEN c/o Custodial Officer ☐ ALIEN's ATT/REP ☒ DHS

DATE: _____ BY: COURT STAFF _____

Attachments: ☐ EOIR-33 ☐ EOIR-28 ☐ Legal Services List ☐ Other Q6

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

(b) (6)

File: A(b) (6)

Date: August 29, 2011

In the Matter of:

(b) (6)

Respondent

)
)
)
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CHARGE: Section 237(a)(1)(B) of the Immigration and Nationality Act, -
Respondent present in the United States longer than permitted

APPLICATIONS: Section 208(a) of the Immigration and Nationality Act, 8 U.S.C.
§ 1158(a) - Asylum.

Section 241 (b)(3) of the Immigration and Nationality Act, 8 U.S.C.
§ 1231(b)(3) - Withholding of Removal.

Relief under Article 3 of the Convention against Torture

ON BEHALF OF RESPONDENT

(b) (6)

ON BEHALF OF THE GOVERNMENT

Assistant Chief Counsel
Department of Homeland Security

(b)(6) & (b)(7)(C)

DECISION AND ORDER OF THE IMMIGRATION JUDGE

Introduction and Procedural Summary

Respondent, (b) (6), is a 41 year old native and citizen of China. The Department of Homeland Security ("DHS") initiated removal proceedings against Respondent with a Notice to Appear ("NTA") served on October 27, 2005, charging that Respondent is removable from the

United States pursuant to the above-captioned section of the Immigration and Nationality Act (hereinafter "INA" or "the Act"). The NTA alleges that Respondent entered the United States on or about January 9, 2005, at (b) (6) as a nonimmigrant visitor for business with authorization to remain in the United States for a temporary period not to exceed February 8, 2005, and he remained in the United States beyond this date without permission from the DHS. . See Exhibit 1 .

Respondent admitted the allegations in the Notice to Appear and conceded the charge of removability. Therefore, the Court finds that removability has been established by clear and convincing evidence as required by the Act. See INA Section 240(c)(2). In the event that removal becomes necessary, Respondent declined to designate a country of removal. Therefore, the Court, pursuant to section 241(b)(2)(C) of the Act, designated China , the country of which Respondent is a citizen.

On April 7, 2005, Respondent applied for relief from removal in the form of asylum under Section 208(a) of the Act. Respondent's application for asylum is included in the record as Exhibit 2 and also includes an application for withholding of removal under section 241(b)(3) of the Act and relief under the Convention Against Torture. Prior to admission of the application Respondent confirmed in Court that he knew the contents of his application and he was given an opportunity to make any necessary corrections. Respondent then swore or affirmed before this Court that the contents of the application, as corrected, were all true and correct to the best of his knowledge.

LEGAL ANALYSIS & FINDINGS

Asylum

To qualify for asylum under section 208 of the Act, Respondent must show that he is a refugee within the meaning of section 101(a)(42)(A) of the Act. The definition of refugee includes a requirement that Respondent demonstrate either that he suffered past persecution or that he has a well-founded fear of future persecution in his country of nationality on account of race, religion, nationality, membership in a particular social group or political opinion. Once eligibility is shown, it is a matter of discretion as to whether the applicant should be granted asylum.

Respondent's Testimony

In his written application, Respondent stated that he was seeking asylum on the grounds that he was persecuted because of his religion and membership in a particular social group.

Respondent's application also indicates the following: He was born in Shandong, China on (b) (6) he is married and has one son; he attended (b) (6) Middle School in Shandong from September 1981 to May 1985 and (b) (6) High School in Shandong

from September 1992 to July 1994; and he worked at (b) (6) Hotel as a Manager from May 1988 to August 2004.

In a document entitled "Statement for Asylum Application" (hereinafter referred to as "narrative statement") dated February 3, 2005, attached to his asylum application, Respondent stated the following:

When he was working as manager of (b) (6) Restaurant in 2002, he observed the management was forming cliques to pursue selfish interests. He retaliated and was punished because he did not approve of what they were doing. He became distressed and pressured in both his life and work.

Respondent had a good friend named (b) (6) who was Christian. (b) (6) often came to visit and comfort him when he learned he was distressed. (b) (6) invited him to his home to listen to sermons before these things happened. He was not interested because of his busy work schedule. When he could not free himself from the pressure and aggravations, he became more dejected and when (b) (6) invited me again, I agreed to join his house church

Respondent first attended the "house church," on July 6, 2003, located at (b) (6) (b) (6) home where about 30 people gathered because his house was quite large. (b) (6) introduced him to everybody. He remembers that everybody first closed their eyes and were praying for God's blessings. Then, they opened the Bible and read sentences from it and someone explained the sentences and everybody joined the discussions. At the end, everybody prayed for God's blessings with their eyes closed and when the meeting was over, they gave blessings to each other.

After attending these meetings a few more times after this first gathering, he decided to participate in this house church every week. After he came to know Christianity, he started to look at illogical and nonsensical things with more forgiving eye. He learned how to change things by praying. He became more optimistic and wanted more people to know Jesus Christ.

On October 19, 2003, Respondent was baptized as a Christian which took place at (b) (6) home where more than twenty people joined his baptizing ceremony. The person in charge of the baptism was (b) (6) and the baptism took place in his bathtub.

On July 28, 2004, his family church was raided by the police. When they were saying their prayers at (b) (6) home, more than 10 policemen showed up. He already knew that the government did not support house churches but he did not know that the government would categorize a belief in God as a cult and illegal. The police searched the room and a few copies of the Bible were discovered and they were ordered to go to the Public Security Bureau (PSB) and they were taken in a vehicle and when they arrived they were taken into different rooms for interrogation

Two PSB officers interrogated him. They asked him why he joined the family church,

who referred him, when he joined, who was in charge, were there contacts with other family churches and to "name a list." The police told him that his family church was illegal and a cult which was outlawed by the government. They wanted him to confess but he said he only attended to worship God every week and did not do anything illegal. The police did not like his attitude and said they would teach him to cooperate. One policeman grabbed him by the collar and pushed him to the corner of the wall and choked his neck until he could see nothing but blackness and when his face turned white the police let go of his hands. He then kicked him and slapped his face. He had never suffered such personal and bodily assault before. He prayed to God to forgive them. The interrogation lasted about 50 minutes. They took him to the detention center and kept him for 6 days. He was not interrogated during this period but the inmates abused him and often grabbed his meal away. He was starved for an entire day.

After the PSB called his wife to come to pay 6000 yuan, she came on August 3 to pay the fine. On the afternoon of the same day, the police called him to his office to sign a pledge letter and he was released after he signed the letter. He remembers that the police wanted him to withdraw from the house church and to stop contacting members of the house church. He was ordered to answer summons from the PSB anytime and would be checked and supervised by the neighborhood committee and he would be responsible for any consequences if they discovered that he did it again.

Respondent stayed at home to rest for a few days when he was released. When he went back to work at the (b) (6) Hotel, he learned he had been fired by his managers because he was a member of a cult and could not be accepted.

He felt he had lost his basic rights of a human being and that people have no right or freedom to choose their beliefs.

He was afraid the police would call him back for questioning at any time and they would beat him and severely berate him because the police had told him that they would call him back to cooperate with their investigation of the house church members if necessary.

He was extremely grieved, disappointed and frightened as well. He felt like he could not live in China under such centralization system any more. He decided to leave China and a friend (b) (6) helped him obtain his passport. He went to the visa interview himself and came to the United States after he obtained his visa.

Credibility

Credibility determinations generally focus on the consistency of the applicant's testimony, both internally and externally with the asylum application and other record evidence. See (b) (6) (b) (6). A lack of credibility can be found where an alien presents implausible and "inconsistent statements, contradictory evidences, and inherently improbable testimony ... in view of the **background evidence on country conditions.**" In re S-

M-J-, 21 I. & N. Dec. 722, 729-30 (BIA 1997). A respondent's testimony can be deemed not credible if the inconsistencies are material and go to the heart of the asylum claim, and no reasonable explanation is offered. See (b) (6) In interpreting 8 C.F.R. § 1208.13, the (b) (6) Circuit has held that (b) (6)

(b) (6)

(b) (6)

Furthermore, corroborating evidence should be produced where reasonably available, so that while consistent, detailed, and credible testimony alone may at times be sufficient to carry an alien's burden of proof, corroborating evidence—or an explanation for its absence—is required if it would be reasonable to expect the alien to produce it. See (b) (6)

(b) (6)

The hearing in this case was conducted on two different dates: August 2, 2011 (first hearing) and August 24, 2011 ("second hearing"). After considering all the evidence in this case, the Court makes the following findings regarding Respondent's credibility:

Inconsistencies

1. In his narrative statement, Respondent stated that after he came to know Christianity and started to learn to change things by praying, he became more optimistic and he wanted to have more people come to know Jesus Christ. His narrative also states that after his baptism, he "also sometimes told [his] relatives stories about Jesus Christ. When the Court asked if his wife is Christian, he replied that she was not. When asked if he told her about Christianity, first he testified that he did not have time to talk to her about Christianity; then he elaborates by stating that she does not have time because she is taking care of the kid. When the Court reminded him of his narrative statement where he states that he wanted more people to know Jesus Christ, he appeared surprised and changed his testimony to state that "he talked to her about it" but because his "kid was small, she did not listen to him." On cross-examination at his second hearing, the government asked him again if his wife was Christian, and he replied she was not. The government counsel then asked him why his asylum application indicates his wife is Christian. Exhibit 2, at 6. He replied that he was a "little bit obscure in that concept; he thought if he was Christian, his family was Christian." Government counsel then asked if his wife belonged to the underground church, and he testified that she did not. Government counsel then asked him why at his asylum interview, he told the asylum officer that she belonged to the underground church. *Id.* Again he says that the "concept was obscure" and he was not clear. He then rambles on about how you become a Christian through baptism and that his wife "seldom went to church meetings and was never baptized which is non responsive to why he had told the asylum officer that interviewed him that his wife belonged to the underground church. It is also inconsistent with his testimony at his earlier hearing, where he said that he did not talk to her about Christianity, or he talked to her but she did not listen, depending upon which version of his testimony is believed, because she was "busy with the kid." The consistency of Respondent's testimony about being a Christian and wanting to spread his belief goes to the heart of his asylum claim because his claim

of past persecution arose out of his attendance at a religious gathering that he testified he believed was illegal. It was clear that whoever prepared or helped him prepare his asylum application and his narrative statement contrived a story the details of which he could not always remember.

2. His testimony about the most traumatic events of his mistreatment by the police was not consistent with his narrative statement. In his narrative, Respondent stated that one policeman grabbed him by the collar and pushed him against the wall and "choked his neck until he could see nothing but blackness and when his face turned "white" the police let go of his [neck];" and then the policeman "kicked him and slapped his face." In court, Respondent embellished upon his mistreatment by testifying, that the beating lasted about a dozen minutes, the policeman slapped his face four or five times and he does not remember how many times the policeman kicked him. When he was asked why his narrative indicated only that he was slapped and kicked one time, he replied that when he wrote statement he did not provide all the details. Also, in his narrative statement, Respondent stated that he was starved by the inmates during detention for an entire day. However, in court he testified he went "without eating for two days" because the inmates grabbed his food. When he was asked to explain the discrepancy with his narrative, he changed his testimony to state that on the first day he had nothing and on the second day he got one meal; "maybe he failed to testify to it accurately." The Court finds that these answers are not reasonable and that at some point after his narrative was drafted, Respondent had learned that he needed to claim more serious mistreatment by the police. His testimony in court at his first hearing is also more consistent with a person being choked because he testified that the policeman released him after seeing the blood rushed to his head and was about to pass out. However, his narrative had stated that the policeman released him when his face turned "white." When Respondent was asked how he could have known his face turned white, he replied that it was just a "way of expression." Not being able to accurately and consistently describe his mistreatment goes to the heart of his claim that he suffered past persecution.

3. In court, Respondent testified that he was released on August 3, 2004 and went to see a doctor on August 4 at a "hospital for cancer and tumors" because it was close to his home and because he had a friend who worked there. Not only did he have difficulty explaining why he would go to a hospital for bruises a week after he received the bruises, explaining only that "he felt mentally uncomfortable and pain all over his body," he also failed to mention receiving medical treatment in his narrative, which he explained that when he wrote his narrative statement, he "ignored it" and was "reminded later that he "better have medical evidence." In fact, Respondent's narrative only indicates that he "stayed at home to rest for a few days when he was released." The Court notes also that the purported "Diagnostic and Treatment Record" was not presented with his initial asylum application but the unauthenticated document was submitted to this Court in March 2009. See Exhibit 4, at pages 40-41. Respondent's explanation further supports a finding that Respondent has embellished on his claim of mistreatment in order to meet the level of persecution required by our asylum laws.

4. Although he did not mention in his narrative statement, he testified in Court that the police regularly visit his home and threatened his wife and kid. When asked how the police

threatened his wife, he replied that the police accused her of "failing to tell his whereabouts and if she failed to tell his whereabouts they will arrest her. When the Court asked him when his wife first told him this, he became fidgety and non responsive. After asking him about three times, he finally responded that the first time was when she wrote a letter in June 2006 but she did not mention being threatened when they talked on the phone. However, when questioned further, he testified that he called his wife two or three times a week and she told him she was being threatened by the police "at the very beginning." When the Court asked him why he would leave his wife under the threat of being arrested, he became more nervous and non-responsive, stating that "they did not arrest her" and "they did not mean to arrest her but she is committing the same crime," "maybe they were trying to scare her but they did not arrest her," "the situation was quite serious and the police came at night and it was raining and they told her if she knew his whereabouts and failed to report, she could be arrested" but he "dared not go back." The Court then asked him if he would rather his wife be arrested and beaten than him and his feeble reply was that "he felt they were trying to scare her... he could not return." It was clear that Respondent had become "hoist in his own petard" and in trying to embellish his fear of returning to China, he began to testify unreasonably and inconsistently.

5. Pastor (b) (6) who Respondent presented to corroborate his attendance at a Christian church in the United States, is also inconsistent with Respondent's claim that he was baptized in China. Pastor (b) (6) testified that he is required to be baptized in order to be a member of his church but if he had already been baptized in China, it would not have been necessary for him to be baptized. However, Pastor (b) (6) testified that Respondent never told him about his experience in China and he never told him he was baptized in China, although Respondent talked to him frequently by phone.

6. Respondent's testimony about attending a Christian church in the United States was also inconsistent with the testimony of the Pastor (b) (6). Although Respondent testified that he attended the "(b) (6)" (actually (b) (6)) according to Pastor (b) (6) every Sunday for five years, Pastor (b) (6) testified that during the two years that Respondent worked at a restaurant in (b) (6), he came down on Wednesday but not on Sunday.

Lack of Corroboration

The principle is well settled in the (b) (6) Circuit that Respondent has the burden of proof and persuasion to establish that his testimony is credible. (b) (6) (b) (6). It is equally well settled in the (b) (6) Circuit that where Respondent has not testified credibly or where his credibility is in doubt, Respondent must corroborate his testimony with independent evidence. As the (b) (6) Circuit has held, (b) (6) (b) (6) Further, the (b) (6) Circuit will uphold an adverse credibility finding (b) (6) (b) (6)

(b) (6)

(b) (6) The discrepancies pointed out above in Respondent's testimony, demonstrate a lack of credibility.

In spite of Respondent's inconsistent and improbable testimony, Respondent has produced only unauthenticated documents to corroborate his injuries by a medical record and a fine receipt which is inconsistent with the laws of China that require that fines over 500 yuan be paid to a bank. The Court takes administrative notice of the Profile of Asylum Claims that mentions that a high percentage of documents coming out of China are fraudulent.

The purported Diagnostic and Treatment Record is inconsistent with Respondent's narrative statement and his description of his mistreatment by the police. Exhibit 3, page 40-41.

His purported "Fine" receipt is also not authenticated and is inconsistent with the laws of China regarding how fines are paid in China. Exhibit 3, page 42-43.

Therefore, these documents are not sufficient to overcome Respondent's lack of credibility during his testimony in court.

Respondent is Not Credible

In conclusion, the inconsistency of his hearing testimony with his written statement, his demeanor during the hearing, his inherently improbable testimony and the lack of corroboration with authenticated documents, all point to the fact that Respondent had been provided a written narrative statement which was not true and for which he was having difficulty contriving details during the hearing.

As the (b) (6) Circuit recently found, as long as *at least one of the grounds underlying an adverse credibility finding* is supported by substantial evidence and goes to the heart of the claim, the appellate court is bound to accept the Immigration Judge's finding. See (b) (6)

(b) (6) (citing (b) (6)). Here, the Court has found many grounds for not believing Respondent.

For the foregoing reasons, the Court makes an adverse credibility finding against Respondent, finding instead that he was not arrested and persecuted for practicing his Christian religion in China.

Past Persecution and Well Founded Fear of Future Persecution

Since the court finds that Respondent has not testified credibly, it also concludes that he did not suffer past persecution, nor does he have a well founded fear of future persecution.

Accordingly, Respondent is not statutorily eligible for asylum under Section 208(a) of the Act.

Withholding of Removal

The entire discussion above, is incorporated by reference. In view of Respondent's failure to meet his burden of proof under Section 208(a) of the Act, it necessarily follows that he has not met his heavier burden of proving that he suffered religious persecution in China and would more likely than not be persecuted on account of his religion if he returns to China, as required by section 241(b)(3) of the Act.

Convention Against Torture (CAT)

Article 3 of the U.N. Convention Against Torture and Other Forms of Cruel, Inhumane, or Degrading Treatment or Punishment protects aliens from being expelled or returned to a country where it is more likely than not that he would be tortured. 8 C.F.R. 1208.16(a), (c)(2).

The burden on Respondent is to establish by credible testimony and/or evidence that it would be more likely than not that he would be tortured if returned to the country of removal. 8 CFR 208.16(c)(2). Torture is an extreme form of cruel and inhuman treatment. 8 CFR 208.18(a)(2). The pain or suffering must be inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity, including the concept of officials turning a blind eye to non-governmental persons who might torture Respondent. Respondent's incredible testimony informs in part that Respondent was not tortured by the police in China. Moreover, Respondent's alleged mistreatment, even if true, did not rise to the level of torture.

The Court has considered Respondent's testimony and has reviewed country information and has found no evidence that torture is occurring on a massive scale in China. The Court's review of the record and testimony in this case also establishes that there is no credible evidence that Respondent was tortured or would more likely than not be tortured upon return to China. Therefore, the Court finds that Respondent has failed to meet his burden of proof under the Convention Against Torture.

Accordingly, the following orders are entered:

ORDER

IT IS HEREBY ORDERED that Respondent's application for asylum be **DENIED**.

IT IS FURTHER ORDERED that Respondent's application for withholding of removal under Section 241(b)(3) of the Act to China be **DENIED**.

IT IS FURTHER ORDERED that Respondent's request for withholding/deferral of removal to China under the Convention Against Torture be **DENIED**.

IT IS FURTHER ORDERED that Respondent be removed from the United States to CHINA.

IT IS FURTHER ORDERED that the time for appeal will commence to run three (3) calendar days after the date that this decision/order is mailed to Respondent's counsel.

Dated: August 29, 2011

(b) (6)

U.S. Immigration Judge

lm

1 anything that she could be arrested. I'm just --

2 A. Come on. This is bologna. So all right. Go
3 ahead if you can.

4 Q. I'm sorry, Your Honor?

5 A. Never mind. This is --

6 Q. All right.

7 (b) (6) TO (b) (6)

8 Q. Sir, since coming to the United States, have you
9 been practicing Christianity?

10 A. Yes.

11 Q. Where do you go, where do you practice
12 Christianity?

13 A. In (b) (6). It was located on (b) (6)

14 INTERPRETER TO JUDGE

15 Q. The closest interpretation the interpreter can
16 come up with is the (b) (6) or the (b) (6) Lutheran.

17 A. (b) (6)

18 Q. Lutheran (b) (6)

19 (b) (6) TO (b) (6)

20 Q. Okay. Where is that located, sir? The Lutheran

21 (b) (6)

22 A. Okay. It's on King's Road. The street number is

23 (b) (6)

24 Q. How long have you been attending church there?

25 A. Five years.

Immigration Judge Complaint Intake Form

HQ Use Only:
complaint #: _____
source: first / subsequent

Date Received at OCIJ: _____

complaint source information	
complaint source type	
<input type="checkbox"/> anonymous <input type="checkbox"/> respondent's attorney <input type="checkbox"/> third party (e.g., relative, uninterested attorney, courtroom observer, etc.) <input type="checkbox"/> other: _____	<input checked="" type="checkbox"/> BIA <input type="checkbox"/> respondent <input type="checkbox"/> OIL <input type="checkbox"/> Circuit <input type="checkbox"/> EOIR <input type="checkbox"/> OPR <input type="checkbox"/> DHS <input type="checkbox"/> OIG <input type="checkbox"/> Main Justice <input type="checkbox"/> media
complaint receipt method	
<input type="checkbox"/> letter <input type="checkbox"/> fax	<input checked="" type="checkbox"/> IJC memo (BIA) <input type="checkbox"/> unknown <input type="checkbox"/> email <input type="checkbox"/> other: _____
date of complaint source	complaint source contact information
(i.e., date on letter, date of appellate body's decision) BIA decision (b) (6) (BIA 1/17/2013)	name: ___David L. Neal, BIA Chairman_____ address: _____ _____ _____ email: _____ phone: _____ fax: _____
additional complaint source details	
(i.e., DHS component, media outlet, third party details, A-number) (b) (6) a BIA remand to the IJ	

complaint details		
IJ name	base city	ACIJ
(b) (6)		Thomas Y.K. Fong
relevant A-number(s)	date of incident	
A (b) (6)	August 29, 2011	
allegations		
BIA sustained a R's appeal and remanded the matter to the IJ. In doing so it vacated the IJ's adverse credibility finding that it was "not supported by the record"; and further was partially based on "minor inconsistencies" that did not relate to the R's substantive claim. Finally, the BIA also noted that the "IJ did not conduct (b) (6) impartially, noting the specific comments by the IJ on the record in response to (Respondent's) testimony."		
nature of complaint		
<input checked="" type="checkbox"/> in-court conduct <input type="checkbox"/> incapacity	<input type="checkbox"/> out-of-court conduct <input type="checkbox"/> other: _____	<input type="checkbox"/> due process <input checked="" type="checkbox"/> bias <input checked="" type="checkbox"/> legal <input type="checkbox"/> criminal

