



Detail

Complaint Number: 744

Immigration Judge: (b)(6)

Complaint Received Date: 04/22/13

Current ACIJ
Dufresne, Jill H.
Past ACJIS:

Base City
(b)(6)

Status
CLOSED

Final Action
Oral counseling

Final Action Date
05/06/13

| A-Numbers(s) | Complaint Nature(s) | Complaint Source(s) |
|--------------|---------------------|---------------------|
| (b)(6) | Bias | BIA |
| | | |

Complaint Narrative: In (b)(6) BIA expressed concern regarding the judge's neutrality at start of proceedings, and remands to a different judge.

Complaint History

| | |
|----------|----------------------------|
| 04/22/13 | Complaint referred to ACIJ |
| 04/23/13 | Database entry created |
| 05/06/13 | Oral counseling |

Immigration Judge Complaint Intake Form

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

Date Received at OCIJ: _____

complaint source information

complaint source type

- ☐ anonymous ☒ BIA ☐ ___ Circuit ☐ EOIR ☐ DHS ☐ Main Justice
☐ respondent's attorney ☐ respondent ☐ OIL ☐ OPR ☐ OIG ☐ media
☐ third party (e.g., relative, uninterested attorney, courtroom observer, etc.)
☐ other: _____

complaint receipt method

- ☐ letter ☒ IJC memo (BIA) ☐ email ☐ phone (incl. voicemail) ☐ in-person
☐ fax ☐ unknown ☐ other: _____

date of complaint source

(i.e., date on letter, date of appellate body's decision)

4/22/13

complaint source contact information

name: DAVID L NEAL

address: Chan, BIA

additional complaint source details

(i.e., DHS component, media outlet, third party details, A-number)

email: _____

phone: _____

fax: _____

complaint details

IJ name

base city

ACIJ

(b) (6)

date of incident

A (b) (6)

1/7/11 (approximately)

allegations

Bias - Concerns re: the judges' neutrality at start of proceedings

nature of complaint

- ☐ in-court conduct ☐ out-of-court conduct ☐ due process ☒ bias ☐ legal ☐ criminal
☐ incapacity ☐ other: _____

Actions for processing complaint
(actions in blue are possible re

(b) (6) 5/13

| Initial Processing | |
|---|--|
| <ul style="list-style-type: none"> • source initiated communication • EOIR received communication from source • EOIR sent communication to source • EOIR requested additional information from source • additional information requested from source was received at EOIR • complaint referred to ACIJ • complaint re-opened • alleged conduct occurred • OCIJ consulting with ELR | <p>(b) (6)</p> <p>(b) (6)</p> <p>Matter 2</p> <p>(b) (6)</p> |

| OPR/OIG Processing | |
|--|--|
| OPR Processing | OIG Processing |
| <ul style="list-style-type: none"> • complaint referred to OPR • OPR declined to investigate or closed without further action • OPR finding <ul style="list-style-type: none"> ◦ professional misconduct (intentional, reckless disregard) ◦ no professional misconduct (poor judgment, mistake, IJ acted appropriately) • OPR recommendation <ul style="list-style-type: none"> ◦ recommended discipline ◦ other – [details] • OPR action referred to ACIJ | <ul style="list-style-type: none"> • complaint referred to OIG • OIG referred complaint back to EOIR for management action • OIG issued report • other OIG action – [details] • OIG action referred to ACIJ |

| Complaint Dismissed or Concluded | | |
|---|---|---|
| Complaint Dismissed | Complaint Concluded | Other |
| <ul style="list-style-type: none"> • frivolous • merits-related • allegations disproven • allegations cannot be substantiated • failure to state a claim | <ul style="list-style-type: none"> • corrective action already taken • intervening event made action unnecessary (IJ termination, IJ termination during trial period, IJ resignation, IJ retirement, other) | <ul style="list-style-type: none"> • merged into another complaint • resolved per another complaint |

| Management Action | |
|--|---|
| Corrective Action | Disciplinary Action |
| <ul style="list-style-type: none"> • oral counseling • written counseling • training • performance-based action (PIP) • other – [details] • corrective action occurred date(s) | <ul style="list-style-type: none"> • discipline proposal (suspension, removal, other) • discipline decision (reprimand, suspension, removal, other) • discipline imposed date(s) |

| Subsequent Action |
|---|
| <ul style="list-style-type: none"> • challenge filed (grievance, arbitration, EEOC, MSPB, other) • subsequent decision (reversed, upheld, mitigated) • subsequent decision imposed date(s) |

| Miscellaneous Action |
|---|
| <ul style="list-style-type: none"> • none of the above – [details] |



Memorandum

| Subject | Date |
|---|----------------|
| Matter of (b) (6) (BIA April 10, 2013) | April 22, 2013 |

To

Brian O'Leary, Chief Immigration Judge

MaryBeth Keller, Assistant Chief Immigration Judge

From

David L. Neal, Chairman

Pursuant to a previous understanding that the Board would bring to the attention of the Chief Immigration Judge any Board decision which remands a case to a different Immigration Judge, you will find attached a copy of the Board's decision dated April 10, 2013, and relevant portions of the record of proceedings, in the above-referenced matter. Please take the necessary steps to ensure that this matter is assigned to a different Immigration Judge on remand.

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:

APR 10 2013

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: (b) (6) Esquire

ON BEHALF OF DHS: (b)(6) & (b)(7)(C)
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; protection under the Convention Against Torture; remand

The respondent, a native and citizen of Syria, has appealed the Immigration Judge's January 7, 2011, decision which denied her applications for asylum pursuant to section 208 of the Immigration and Nationality Act ("Act"), 8 U.S.C. § 1158, withholding of removal pursuant to section 241(b)(3)(A) of the Act, and for protection under the Convention Against Torture ("CAT"). See 8 C.F.R. §§ 1208.16(c), 1208.18. During the pendency of the appeal, the respondent also filed several motions for consideration of additional evidence. The Department of Homeland Security ("DHS") has requested that the Immigration Judge's decision be affirmed, and the respondent's motions be denied. The appeal will be sustained, and the record remanded for further proceedings before a different Immigration Judge.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including whether the parties have met their relevant burden of proof, and issues of discretion, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii). The respondent's applications for relief from removal are governed by the provisions of the REAL ID Act. See *Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006).

The Immigration Judge did not credit the respondent's testimony regarding the past mistreatment she claimed to have experienced in Syria based solely on a determination that the respondent never intended to marry her ex-fiancé, (b) (6) despite obtaining and entering the United States with a K-1 nonimmigrant "fiancé" visa (I.J. at 11-13). We cannot sustain the Immigration Judge's adverse credibility determination, as it was not based on the "totality of the circumstances, and all relevant factors" as required under the REAL ID Act. See section 208(b)(1)(B)(iii) of the Act, 8 U. S. C. § 1158 (b)(1)(B)(iii).

First, we note that the Immigration Judge did not identify actual inconsistencies between the respondent's and (b) (6) narrative concerning objectively observable facts or details about their relationship (see, e.g., I.J. at 12). Cf., e.g., (b) (6)

(b) (6)

(b) (6)

Significantly, moreover, the Immigration Judge did not identify actual

discrepancies in the respondent's testimonial and written account of her past mistreatment in Syria upon which her claim of persecution and torture was based. *Cf., e.g.,* (b) (6) *supra* (b) (6)

(b) (6)

Rather, the Immigration Judge simply credited (b) (6) subjective belief that the respondent did not intend to marry him over the respondent's claim to the contrary (I.J. at 11-13).

We agree with the Immigration Judge's general proposition that an asylum applicant's intention for departing the claimed country of persecution may be relevant in certain circumstances. In the instant case, however, (b) (6) subjective beliefs regarding what the respondent may or may not have intended to do with regard to their relationship, and when the respondent's intention to marry or not marry him was formed, were ultimately conjectural (I.J. at 11-13; *see, e.g.,* Tr. at 102, 115-17, 124-29, 139-40). Such subjective beliefs, even if sincere, cannot on their own, and without some nexus to the respondent's asylum claim, be sufficient to render the respondent's claim of past mistreatment wholly unworthy of belief.¹ *See*

(b) (6)

(b) (6) It is also unclear from the record that the respondent's father's alleged attempt to "bribe" (b) (6) into entering into a fraudulent marriage with the respondent was known or condoned by the respondent, such that her father's acts should be attributable to her (I.J. at 11; Tr. at 110-12, 142).

A reading of the remainder of the Immigration Judge's analysis with regard to the corroboration requirement and failure of proof may have been influenced in part by (b) (6) inadequate determination that the respondent's testimony with regard to her past experience in Syria was not credible (I.J. at 13-18). Accordingly, we conclude it appropriate to remand the record for reconsideration of the respondent's credibility and her eligibility for asylum, withholding of removal under the Act, and for protection under the CAT, based on the totality of the record, as well as for any other relief that may be available to her. Both parties are permitted to submit additional arguments and evidence in remanded proceedings.

We note that the respondent on appeal has requested that the case be remanded to another Immigration Judge due to concerns regarding the Immigration Judge's neutrality at the beginning of the respondent's proceedings (Respondent's Br. at 1-14; *see, e.g.,* Tr. at 5-6, 22-26, 31-32, 39). *See Schweiker v. McClure*, 456 U.S. 188, 195 (1982). Based on the totality of the record, we will grant the respondent's request and remand the record for further proceedings before a different Immigration Judge. The following orders shall be entered.

¹ For instance, we note that the Immigration Judge did not indicate that (b) (6) provided testimony that contradicted details or claims that the respondent provided in support of her applications for relief from removal.

ORDER: The appeal is sustained.

FURTHER ORDER: The record is remanded to a different Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Ellen Rebowitz
FOR THE BOARD

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

(b) (6)

File: A (b) (6)

Date: January 7, 2011

In the Matter of:

(b) (6)

)
)
)
)
)

IN REMOVAL PROCEEDINGS

CHARGES: Section 237(a)(1)(B) of the Immigration and Nationality Act ("INA") – remaining in the United States longer than permitted after admission.

APPLICATIONS: Section 208 of the INA, 8 U.S.C. § 1158 – Asylum.

Section 241(b)(3) of the INA, 8 U.S.C. § 1231(b)(3) - Withholding of Removal.

8 C.F.R. § 1208.16 - Withholding of Removal under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment ("Convention Against Torture" or "CAT").

ON BEHALF OF RESPONDENT:

(b) (6)

ON BEHALF OF THE GOVERNMENT:

(b)(6) & (b)(7)(C) Assistant Chief Counsel
Department of Homeland Security

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

DECISION OF THE IMMIGRATION JUDGE

The respondent has applied for asylum, withholding of removal, and protection under the Convention Against Torture. For the following reasons, the Court denies all forms of relief.

I. BACKGROUND

The respondent is a 23-year-old single female who is a native and citizen of Syria. Removal proceedings commenced against her with the issuance of a Notice to Appear ("NTA") dated December 15, 2009. *See* Exh. 1. The NTA alleges that the respondent was admitted to the United States at (b) (6) on or about September 4, 2009 as a nonimmigrant fiancée of a U.S. citizen with authorization to remain until December 3, 2009. *Id.* The respondent subsequently remained in the country after December 3, 2009 without authorization. *Id.* The NTA charges removability under INA § 237(a)(1)(B) for overstaying her visa. *Id.*

At a hearing on January 7, 2010, the respondent, through counsel, admitted the charges contained in the NTA and conceded removability. Accordingly, the Court finds alienage and removability have been established by clear and convincing evidence. INA § 240(c)(3)(A), 8 U.S.C. § 1229a(c)(3)(A); *see also* 8 C.F.R. § 1240.8(a). Because the respondent declined to designate a country of removal, the Court will designate Syria, the country of citizenship, pursuant to INA § 241(b)(2)(D), 8 U.S.C. § 1231(b)(2)(D). The Court has jurisdiction to consider the applications under 8 C.F.R. § 1240.1(a)(1)(ii)-(iii).

II. EVIDENCE PRESENTED

A. Testimony

The respondent provided testimony in support of her applications for relief at a hearing on May 13, 2010. At the same hearing, a friend of the respondent, (b) (6) also testified. However, (b) (6) testimony did not record properly. At the respondent's election, (b) (6) subsequently submitted an affidavit summarizing her statements instead of conducting an additional hearing. Accordingly, the Court will consider (b) (6) affidavit, rather than her live testimony, for purposes of this case. At the request of the Court, the government presented (b) (6) (b) (6) the respondent's former fiancé, at a hearing on October 1, 2010.

The following is a summary of the testimony offered.

1. Respondent's testimony

The respondent was born in a village in the Al Hasaka region of Syria. She is an Assyrian Christian and has been baptized in the church. The respondent met her former fiancée, (b) (6) (b) (6) in March 2008 while he was in Syria. They were engaged in April 2008 in her village.

The respondent testified she was a member of various organizations in Syria, including the (b) (6) (also spelled (b) (6)), the (b) (6) and a

charitable organization. She described her participation in the (b) (6) organization as attending church, helping the poor, and teaching children the Assyrian language. As for the (b) (6), the respondent stated that she joined when it was established on April 12, 2005 because it offered a means of uniting Assyrian people and teaching the Assyrian language. According to the respondent, this organization is not a political party. The charitable organization she belonged to helped Assyrians both in and outside of her village and provided medical aid.

The respondent stated that the Syrian government was threatened by such organizations because they united members of her community and are believed to oppose the government. She has not, however, spoken out directly against the government or engaged in overt political activities. As a result of her involvement in these organizations, members of the Syrian intelligence agency mistreated her, as described below.

The respondent further testified that she encountered problems due to her brother's secret marriage to a Muslim woman. Based on the respondent's understanding of the law, it is illegal for a Muslim woman to marry a Christian man, and if such a marriage takes place, the man must convert to Islam. After the woman's family found out, they threatened her brother and he fled to Sweden in May 2008. He subsequently was tried in absentia for this crime. She testified that Syrian intelligence knew of the marriage and the threats she received in May and June 2009 were related in part to it.

All told, the respondent cited three incidents in May and June 2009 involving Syrian intelligence. In May 2009, two officers came to her home, where the respondent lived with her parents. The officers told her they were from the intelligence agency and showed her identification; however, she did not know their names. During this first incident, they questioned her about her brother and her involvement in organizations. They also told her to end her involvement and intimated that they would "deal" with her and her family and she did not. They did not harm or explicitly threaten to harm her at this time, though the respondent felt intimidated and frightened from this experience. The encounter lasted approximately ten minutes.

In June 2009, the same officers came twice to her home. These incidents lasted twenty minutes or more. During the second visit, the officers again questioned and threatened her about her activities with the organizations and about her brother. Specifically, they asked where her brother had gone and demanded that he return. She did not tell him where her brother had fled.

During the last incident, the officers sequestered the respondent in one of the rooms of the house. Her parents were home at the time, but one officer stood by the door to the room and prevented them from coming inside. One officer threw her on the floor, and the other held her down by her neck. They also threatened her with rape. On cross examination, the respondent added that the officers had also slapped her. After the officers left, the respondent told her parents what had occurred.

In July 2009, the respondent had run-ins with the family of her brother's Muslim wife. In the first instance, the respondent was shopping in preparation for her wedding when a woman approached her. The woman, who the respondent testified was the sister of her brother's wife, was very angry and demanded that the respondent's brother return to Syria and convert to Islam.

The same woman approached the respondent again apparently later that month, this time with two men. On direct, the respondent stated that they held her and threatened to take her to Damascus if her brother did not return and convert. As a result, the respondent testified that she is afraid to return because the family will take revenge on her for her brother's actions. On cross examination, she elaborated that the woman hit her on this occasion and the men managed to put her in a car. She was able to get out with the help of people in the market and was not otherwise harmed. The respondent did not attempt to report these incidents to the police because she believed that the police would not help her due to the woman's unidentified connections with people in the government.

The respondent experienced no further mistreatment before she left Syria. However, she stated that as a result of these incidents she became depressed and was "mentally very tired." She sought help from a doctor for these troubles.

As noted above, the respondent entered the United States on a fiancée visa on September 4, 2009. She confirmed, when asked, that she intended to marry her fiancé, (b) (6) at the time. Her testimony suggests that she had participated in planning the wedding before and after her arrival.

All told, the respondent stated she saw (b) (6) approximately fourteen times in the United States and spoke with him on the phone on a few occasions after her arrival. The wedding was ultimately called off around September 18. They were to be married on October 3, 2009. According to the respondent, conflicts between her and (b) (6) sister precipitated the couple's split. Specifically, although (b) (6) sister was financing much of the wedding, the respondent felt the sister was interfering with every decision the respondent attempted to make about what to purchase. The respondent explained that (b) (6) did not respect her and sided with his sister, with whom he was living at the time. She gave back her engagement ring promptly after breaking up with (b) (6).

2. (b) (6) affidavit

(b) (6) was scheduled to be a bridesmaid for the respondent and made arrangements to take off of work to be a part of the wedding. The respondent accompanied her and two other girls to the bridal shop and they ordered dresses. (b) (6) knows both the respondent and her fiancé, but she is not "entirely sure of what happened." As far as she knows, "plans for the marriage were on until there were problems between [the respondent] and her future husband's family." (b) (6) also expressed the opinion that the respondent is a "genuinely loving and caring person who was looking forward to beginning a new life with her fiancé."

A (b) (6)

3. (b) (6) testimony

(b) (6) was born in Syria, came to the United States in February 2001, and was granted citizenship on July 31, 2007. Several of (b) (6) immediate family members are in the United States: his mother and two sisters are U.S. citizens and his father is a legal permanent resident.

(b) (6) described how he became acquainted with the respondent. In 2007, he noticed the respondent on his sister's wedding video and asked his cousin about her. The cousin, who lived in Syria, replied that the respondent was living in Syria as well and that he knew her. When (b) (6) returned to Syria for a one-month visit in March 2008, his cousin was able to arrange a meeting with the respondent at her home. (b) (6) subsequently saw the respondent again at a wedding party. The day after the party, (b) (6) approached the respondent's family for her hand in marriage. They agreed, he proposed, and she accepted. At that point, he had known the respondent for approximately one week, a time frame which he testified was not uncommon in their culture.

(b) (6) remained in Syria for a couple of more weeks following their engagement, during which time he saw the respondent perhaps twice. They had an engagement party sometime, he thought, in March 2008. Approximately 250 people attended the party, of which about 200 were the respondent's relatives.

After (b) (6) returned to the United States, they remained in telephone contact for the next year. During this time, the respondent assured (b) (6) that she loved him and was not marrying him only to come to the United States. They would discuss wedding plans and he sent her money so she would be able to buy clothing and gold jewelry. She asked him to expedite the arrangements and that they would finalize everything when she arrived. He now believes that she was lying during these conversations, particularly because her behavior changed so quickly after her arrival.

(b) (6) booked a banquet hall, talked to a wedding singer, and made arrangements for the flowers and church. He stated that his family wished to have the wedding ceremony at their church with a priest from that church presiding. He asked the respondent's opinion about the priest, but she said that she did not care. He also had invitations printed prior to her arrival. (b) (6) invited some 400 relatives to the wedding and upon request gave 100 invitations to the respondent's brother about a month before she arrived, with the understanding that her family would ask if they needed more. All together, he spent approximately \$17,000 on the wedding and another \$4000 on furniture in preparation for her arrival.

(b) (6) acknowledged that he petitioned for the respondent to come to the United States. He confirmed her arrival in September 2009. He also noted that her mother and father came along on visitors visas on the basis that they were attending the respondent's wedding.

A (b) (6)

(b) (6) met the respondent at the airport and noticed a complete change in her behavior starting at that point. The respondent did not wish to speak with him and initially did not want to accept a ride with him from the airport. Eventually, (b) (6) father interceded, and she went with them. However, the respondent essentially ignored (b) (6) during the car ride to her brother's house, where they went first to greet visitors. Thinking she was tired from the 13-hour flight and that she would want to visit with relatives at her brother's home, (b) (6) did not stay there long.

(b) (6) attempted to see the respondent the following day, but she was "not welcoming." He "always" tried to see her after that, but she avoided him with excuses that she was busy. (b) (6) also attempted to discuss the wedding plans with the respondent, but she would similarly evade his questions. She did not tell him the names of her bridesmaids, and he could not confirm whether they bought dresses or took off work for the wedding. At some point, his sister called the respondent to see if they could make arrangements; however, the respondent changed her mind every time they made plans to go out together. He stated that his sister and mother liked the respondent and treated her well during their engagement.

(b) (6) confirmed that the respondent was the one who called off the wedding a couple of weeks after her arrival in the United States. He learned of this decision when he went to the respondent's brother's home and was told by him that the wedding would not occur. At some point, the respondent also admitted to (b) (6) that she did not wish to marry him and that she had used him to come to the United States.

In November 2009, the respondent's father offered to pay (b) (6) \$30,000 if he would marry her "on paper for the government." (b) (6) understood from this conversation that the family was trying to obtain a green card for the respondent. (b) (6) refused the offer and filed a report with immigration about the respondent.

In December 2009, the respondent threatened and assaulted (b) (6) mother at his mother's home. (b) (6) was not present during the incident, but called the police after he learned what had occurred from his mother. (b) (6) believes that his reporting the respondent to immigration sparked the incident.

Overall, (b) (6) stated he had loved the respondent and was heartbroken when the marriage did not take place. He believes that the respondent had no real intention to marry him from the start of the relationship. According to (b) (6), she also hurt his family and his reputation, and he is barely making payments from the expenses. He also acknowledged that he wishes to see her ordered removed to Syria.

B. Documentary Evidence

The Court has considered the documentary evidence submitted in this case:

Exhibit 1: The NTA dated December 15, 2009

Exhibit 2: I-589 and Individual Supplement to the Asylum Application

Tab A: copy of the respondent's personal identification card
Tab B: documents related to the respondent's activities and membership in organizations in Syria
Tab C: letter from doctor in Syria concerning the respondent's health
Tab D: letter from church in the United States concerning the respondent's membership
Tab E: criminal court records from Syria concerning the respondent's brother
Tab F: photos of the respondent's church activities
Tab G*: 2009 State Department Human Rights Report for Syria
Tab H*: articles on honor killings in Syria
Tab I*: articles on mistreatment of political opponents in Syria¹

Exhibit 3: Supplement to the Asylum Application. Some of these documents are duplicates of those submitted previously.

Tab A: articles on mistreatment of political opponents in Syria
Tab B: 2009 State Department Human Rights Report on Syria
Tab C: 2009 State Department International Religious Freedom Report on Syria
Tab D: the respondent's identity documents
Tab E: the respondent's baptism certificate
Tab F: documents related to the respondent's activities and membership in organizations in Syria
Tab G: criminal court records from Syria concerning the respondent's brother
Tab H: photos of the respondent's church activities in Syria
Tab I: copies of the respondent's secondary education diploma and attendance certificate
Tab J: letter from doctor in Syria concerning the respondent's health
Tab K: photos of the respondent's engagement in Syria
Tab L: copy of receipts for bridesmaid's dresses
Tab M: letter and copy of work schedule from bridesmaid's employer showing scheduled day off on October 3, 2009
Tab N: receipt of payment and copy of wedding invitation
Tab O: letter from banquet hall confirming booking for the respondent's wedding reception

¹Tabs G, H, and I were submitted as Tabs A, B, and C, respectively. For clarity, the Court redesignates them accordingly at this time and will refer, when necessary, to these documents in the manner noted above.

Tab P: letter from priest concerning performance of the respondent's wedding ceremony
Tab Q: the respondent's statement
Tab R: medical reports and prescriptions from the United States for the respondent
Tab S: letter confirming the respondent's church activities
Tab U: witness list

Exhibit 4: Map of Syria, marked with the location of the respondent's village

During the October 1, 2010 hearing, the government introduced a letter written by (b) (6) to immigration authorities concerning the respondent. The letter was marked as Exhibit 5 and was discussed during (b) (6) testimony. However, the parties did not return the letter to the Court and the Court does not have a copy of it in the record. Accordingly, the Court will not consider the letter as part of the documentary record and will consider only (b) (6) testimony about it.

C. Country Conditions

As the State Department notes in its 2009 report, Syria is a republic under an authoritarian regime. Exh. 3, Tab B, at 43. Members of the government and security forces have committed serious human rights abuses, including torture, and that the human rights situation worsened overall during that year. *Id.* at 43, 47-48. Security services have a broad role in the country that extends "far beyond strictly security measures." Exh. 3, Tab B, at 49..

The Ba'ath party controls the government and state of emergency laws have been in force since 1964. Exh. 3, Tab A, at 5; Tab B, at 43. The State Department acknowledges that the Syrian government did not permit the formation of new political parties in 2009, and Amnesty International indicates that only the Ba'ath Party and parties linked to it are officially recognized. *See, e.g.,* Exh. 3, Tab A, at 5, 33; Tab B, at 58. The State Department indicates that the Syrian government has tolerated the existence of some illegal political parties but has harassed others. Exh. 3, Tab B, at 58.

In general, freedom of association and expression are strictly monitored and controlled. *See, e.g.,* Exh. 3, Tab A, at 5, 33; Tab B, at 58. The record establishes that critics of the government, members and leaders of human rights organizations, journalists, and other activists have been targeted for abuse in recent years, including arrests and disappearances. *See, e.g., Exh. 3, Tab A, at 1, 5-7, 10, 12, 26, 39-40; Tab B, at 45.* Other individuals perceived to be opponents of the regime are also at some amount of risk for mistreatment and persecution, including those who have not been apparently involved in politics. *See, e.g.,* Exh. 3, Tab A, at 5, 8, 33; Tab B, at 52.

The State Department reported, however, that the Syrian government generally permitted national and ethnic minorities to conduct traditional, religious and cultural activities in 2009, with

the main exception being Kurdish population. Exh. 3, Tab B, at 76-78; *see also* Exh. 3, Tab C, at 87. All groups, religious and nonreligious, are subject to surveillance and monitoring by government security services. Exh. 3, Tab C, at 87. The record contains some anecdotal media and internet reports of Assyrian Christians who encountered persecution or torture. *See* Exh. 3, Tab A, at 29-30;

According to the State Department, the Syrian government restricts full freedom of choice in religious matters and confirms that a Muslim woman cannot marry a Christian man. Exh. 3, Tab C, at 84. There were no reports of forced religious conversion in 2009. Exh. 3, Tab C, at 88.

The record also contains information about honor killings. It indicates that such killings are committed by family members against women suspected of various sexual improprieties, including being a rape victim, as one well-publicized incident has shown. *See, e.g.,* Ex 2, Tab H, at 5-14, 17, 34-35. All told, though statistics were difficult to come by, reports varied that somewhere between 29 and 300 killings occurred annually in Syria. Exh. 3, Tab A Tab B, at 72. There have been efforts to crack down on the problem. On July 1, 2009 the president amended the penal code, which had permitted courts to waive or reduce punishment for perpetrators of honor killings. The new statutory language sets a two-year mandatory minimum sentence, though this minimum sentence continues to be less than for other forms of homicide. Exh. 3, Tab B, at 72.

III. FINDINGS AND ANALYSIS

A. Credibility and Corroboration as to Past Mistreatment

i. *Statement of Law*

The respondent's case is governed by the REAL ID Act because she applied for asylum after the act's May 11, 2005 effective date. *See, e.g.,* (b) (6) (b) (6) (recognizing effective date of REAL ID Act's credibility and burden of proof standards). Under the REAL ID credibility rubric, the Court should generally consider factors that include demeanor, candor, responsiveness, inherent plausibility of the claim, the consistency between oral and written statements, the internal consistency of such statements, the consistency of such statements with evidence of record, and any inaccuracy or falsehood in such statements, whether or not such inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim. INA § 208(b)(1)(B)(iii), 8 U.S.C. § 1158(b)(1)(B)(iii); *see also Matter of J-Y-C-*, 24 I&N Dec. 260, 262 (BIA 2007). (b) (6)

(b) (6)

The credibility determination "apprehends the overall evaluation of testimony," including "the manner in which it hangs together with other evidence." *Matter of Vilanova-Gonzalez*, 13 I

&N Dec. 399, 403 (BIA 1969). "When the testimony of the respondent's and her witnesses is in direct conflict with the testimony of witnesses presented by the Government, there must be an evaluation and a weighing of all the evidence and a finding made with regard to its credibility." *Id.*

In evaluating the testimony of all witnesses, an Immigration Judge should pay close attention to the content of the witnesses' statements. (b) (6) To be sure,

(b) (6)

(b) (6)

Thus a single misstatement, or even an insignificant lie, does not mean an Immigration Judge should disregard a witnesses's testimony in its entirety.

Rather, the focus remains on distinguishing simple error from material fabrication.

The (b) (6) Circuit has cited social science as a tool for determining and describing a witness's credibility. For example, liars tend to say less, provide fewer details, and psychologically distance themselves from the lie, such by including fewer references to themselves, their feelings, and the stories. (b) (6)

It is also appropriate in assessing a witness's credibility to consider that individual's motive to lie. See (b) (6) A respondent in removal proceedings may be motivated to support a claim of relief. See *id.* at (b) (6) However, an adverse witness's motivations may be more difficult to ascertain.

Finally, the Court observes that a respondent's participation in unrelated instances of immigration fraud may support an adverse credibility finding for purposes of asylum and other forms of humanitarian relief. See (b) (6)

(b) (6)

see also (b) (6)

(b) (6)

(b) (6)

But see *Matter of O-D-*, 21 I & N Dec. 1079, 1081 (BIA 1998) (for credibility purposes, false documents used to escape persecution may be fully consistent with a claim for asylum); see also (b) (6) As the (b) (6)

Circuit has recognized, when an applicant evidences a (b) (6)

(b) (6)

ii. Application of Law

A (b) (6)

At the outset, the Court will credit the respondent's claims that she is an Assyrian Christian; that she is a member of various organizations in Syria; and that her brother married a Muslim woman and suffered problems because of it. In addition to her statements, the respondent has provided documentation to corroborate these aspects of her case, as described above. That being said, the Court finds the respondent not credible as to her claims of past mistreatment in Syria based on these affiliations.

The Court reaches this conclusion after careful consideration of the witnesses' testimony concerning the respondent's intentions in coming to the United States. The respondent's fiancée visa limited her entry "solely to conclude a valid marriage with the petitioner within ninety days of admission." INA § 101(a)(15)(K)(i); 8 U.S.C. § 1101(a)(15)(K)(i). Based on the testimony presented, the Court finds she had no intention of marrying (b) (6) at the time of her arrival and thus committed fraud in entering the United States on this visa. Rather, she used (b) (6) to bring her and her family to the United States, ending their romantic relationship as soon as was practicable. Notably, the respondent's family then attempted to bribe (b) (6) into entering a fraudulent marriage to ensure her legal resident status. Only when that attempt failed and the respondent was placed in removal proceedings did she apply for asylum based primarily on instances of past harm. She has offered no real corroboration of these incidents, and on these facts, the Court disbelieves the respondent's testimony that she experienced past mistreatment in Syria.

A. credibility as to the respondent's intentions in entering the United States

Taken as a whole, significant conflicts exist between the respondent's and (b) (6) testimony as to the nature and extent of their interactions after her arrival and her intentions when she entered this country. The respondent stated that she intended to marry (b) (6) when she came to the United States, that they saw each other and talked frequently after she arrived, and that they eventually broke up because his sister interfered with the wedding planning. According to (b) (6) the respondent's attitude toward him changed immediately upon her arrival, she avoided him and made excuses when he attempted to see her and complete the wedding preparations, and his family treated the respondent well during their engagement. Even more notably, the respondent offered no testimony during the hearings to rebut (b) (6)'s claims that she admitted to using him to come to the United States and that her father subsequently offered him a sizable sum of money to marry her so that she could obtain legal resident status.

The Court believes (b) (6) testimony over the respondent's as to any conflicting testimony and takes as true his statements to the extent she did not attempt to rebut them. Examining the totality of the circumstances and weighing (b) (6) testimony against that of the respondent as to her intentions regarding their marriage, the Court finds that his account survives scrutiny. The Court concludes that the respondent is not credible on the issue of her intentions in marrying (b) (6).

Paying close attention to the content of his testimony, the Court finds (b) (6) a credible witness overall. (b) (6) demonstrated candor in his frank, responsive testimony. His discussion of his relationship with the respondent was a thorough, internally consistent account, spanning his initial pursuit of her in Syria to their breakup shortly after her arrival. Utilizing the indicators of credibility discussed by the (b) (6) Circuit, (b) (6) displayed none of the "psychological distancing" characteristic of fabrication. Rather, he provided a heartfelt and deeply personal story that clearly caused him some embarrassment and discomfort to relay.

The respondent suggests that Court should dismiss (b) (6) testimony in its entirety as the irrelevant and prejudicial statements of a jaded ex-lover who wishes to punish the respondent. *See* Respondent's Br. at 4-5. The Court does note aspects of (b) (6) testimony suggest that he might have a motive to lie; as he acknowledged, the respondent rejected his love, damaged his reputation, cost him a significant amount of money, and assaulted his mother. He wrote a letter to immigration officials regarding the respondent and also conceded during his testimony that he wished to see her removed to Syria.

Notwithstanding these potential issues with (b) (6) testimony, there is simply no indication that he actually has lied to this Court out of revenge. The Court detected no vindictiveness in his testimony overall. What might have been acid assault on her character and intentions was instead, contrary to the respondent's assertions, a relatively thoughtful assessment of their relationship, including his role in advancing it. (b) (6) acknowledged that he had initiated the relationship and sought to bring the respondent to the United States. He further acknowledged that she had represented to him her desire to marry until the time she arrived. Along the same lines, he stated that he had loved her wholeheartedly and even believed they might go ahead with the wedding, despite her change in behavior, until she broke off their engagement. It was only with regret that (b) (6) concluded that she had lied to him and that he had been duped, perhaps from the beginning.

By contrast, the respondent's testimony concerning her relationship with (b) (6) and her intentions in coming to the United States leaves much to be desired. Her account was generally vague and lacked detail on critical aspects of their relationship, including how and why the wedding was called off. *See* (b) (6)

(b) (6)

Additionally, the respondent appeared to be psychologically distancing herself in her testimony about their relationship; she did not insert herself, or her feelings about him or the marriage, into her statements.

The respondent, on the other hand, has more to gain by lying to the Court, (b) (6) and potentially everyone else about her intentions in marrying and her reasons for coming to the United

States. She also has a correspondingly weak incentive to disclose any fraud she may have perpetrated regarding her K-visa. This is particularly true now that she has applied for other forms of relief, placing her credibility at issue, as well the Court's ability to deny asylum as a matter of discretion.

The corroborative evidence offered provides little support on the issue of the respondent's intentions in coming to the United States. (b) (6) testimony essentially confirms the respondent's story that the couple simply broke up over personal conflicts after the respondent's arrival. However, it is not clear that (b) (6) had any independent knowledge of the situation beyond what the respondent told her, and (b) (6) in fact admits that she is not entirely sure of what occurred. Thus, even if (b) (6) honestly believed that the respondent planned to marry, she may have simply been led on just as (b) (6) was. Further, even assuming that the respondent made plans by asking (b) (6) to be a bridesmaid and accompanying her attendants to the bridal shop, such actions are relatively weak circumstantial evidence of the respondent's motivations. It is just as likely that the respondent was simply putting on a show as it is that she intended to go through with the marriage.

Similarly, the documents that the respondent presented to corroborate her stated intentions do not significantly aid her case. At most, the various receipts and letters simply acknowledge that plans were made—not that she was actively involved in making those plans or that she intended to go through with the wedding once she arrived. Rather, to the extent this evidence does anything at all, it tends to support (b) (6) testimony indicating that he was largely responsible for planning the wedding and that much of the initial preparations were made prior to her arrival. To that end, the Court notes specifically the receipt for wedding invitations, dated September 1, 2009, and a letter stating that the banquet hall was booked on August 1, 2009. See Exh. 3, Tab N; Tab O.

B. Credibility regarding past mistreatment

The respondent's willingness to lie raises significant questions about the truthfulness of her claims of past mistreatment. This is particularly true under the circumstances of this case. First, the extent of her lies is considerable. To that end, she maintained a relationship with (b) (6) for more than a year and permitted wedding planning to advance to a late stage to ensure her fraudulent entry into the United States. After she called off the wedding, the family attempted another instance of fraud by offering (b) (6) money to enter into a sham marriage to ensure her legal resident status. Moreover, there is no suggestion that the respondent may have committed fraud, even in part, in order to escape persecution the persecution she allegedly suffered shortly before her arrival.

Additionally, the respondent has offered little to corroborate her otherwise incredible testimony. (b) (6)

(b) (6) Only if such

A (b) (6)

(b) (6)

citations omitted). Notably, the respondent failed to submit any evidence from family members, including her parents, even though they were supposedly present in the home during the most significant incident with intelligence officers in June 2009. There is no indication in this record that they could not provide statements or testimony. Although the respondent did submit medical information indicating that she suffered from depression and other mental problems, allegedly arising from the mistreatment she endured, this alone would not overcome the Court's misgivings concerning her credibility. This is particularly true because the reports do not clearly indicate that the respondent's psychological symptoms are consistent with persecution or torture. On these facts, the Court does not believe the respondent's claimed mistreatment occurred.

2. Asylum

(b) (6)

(b) (6)

The INA defines a refugee as an alien who is unable or unwilling to return to the country of his nationality "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." *Id.* (quoting 8 U.S.C. § 1101(a)(42)(A)). If an applicant establishes past persecution, a rebuttable presumption arises of future persecution.

(b) (6)

A well-founded fear is one that is both subjectively genuine and objectively reasonable.

(b) (6)

(internal quotation and citation omitted). To establish the objective prong, an applicant must "demonstrate that there is a reasonable possibility of suffering such persecution upon return, or that a reasonable person in his shoes would fear persecution." (b) (6) (internal citations and quotations omitted). Typically, [t]he alien must present specific, detailed facts showing a good reason to fear that he ... will be singled out for persecution." (b) (6) (internal quotation and citation omitted). In limited cases, an applicant may also establish a well-founded persecution with evidence of a "pattern or practice" of persecuting "a group of persons similarly situated to the applicant on account of [a protected ground]." 8 C.F.R. § 208.13(b)(2)(iii); *see also*

(b) (6)

(b) (6)

To succeed under this theory, (b) (6)

(b) (6)

As noted above, the Court finds the respondent not credible regarding her claim of past persecution. Thus, her eligibility hinges on whether she can independently establish a well-founded fear of persecution without the benefit of a presumption. The respondent has asserted a

A (b) (6)

number of theories as bases for a well-founded fear of persecution: political opinion, nationality, religion, and membership in a particular social group. The Court finds that the respondent has not demonstrated that her fear of return is objectively reasonable under any of them.

a. Political opinion

First, the respondent asserts that her activities and membership in various organizations will cause the Syrian government to impute to her an opposition political opinion and persecute her accordingly.² However, after discounting the respondent's incredible testimony as to the incidents of past persecution, there is nothing else beyond her own assertions—to show that the government would care about these associations.

To be sure, the Court might assume the government is or would become aware of the respondent's membership and activities with these groups, given its close scrutiny of organizations. However, there appears to be nothing in particular about the respondent's level or type of participation that necessarily would attract persecution. What the respondent really argues is that the nature of these groups places all members at risk of harm. The primary problem with the argument remains that the Court knows very little at all about the groups to which the respondent belongs. The respondent has indicated that some of these organizations engage in activities connected to her Assyrian Christian heritage, that they "ask for rights," and she believes that the government sees these groups as threats. Based on this scant evidence, the Court is unable to tell if these organizations are of a type that have been or would actually be seen to be political opponents and persecuted as a result, as she asserts.

The country conditions materials in the record do not establish that every civic organization in Syria is subject to *persecution* per se based on presumed opposition to the government—even if most groups are harassed in some way. Nor do these reports establish that Assyrian Christian organizations—which these mainly appear to be—or their members specifically encounter an increased risk of harm. When asked for additional evidence concerning the respondent's particular organizations, her counsel stated that there are no known independent reports about how these individual groups are treated by the government. Even assuming this is true, the respondent has not provided sufficient information about these particular organizations, either from her testimony or other evidence, from which the Court could gauge the likelihood of persecution. She has not, for example, submitted any information from other members of these groups as to their treatment by the government, or even a mission statement or other descriptions of them that might give the

²The Court notes that the respondent's brief states in passing that she has displayed an overt political opinion as well. See Respondent's Br. 2. However, the respondent's testimony indicates that the groups she belongs to are not inherently political and she testified that she has not been overtly critical of the government or otherwise engaged in politics. Moreover, in counsel's oral opening statement, he referred only to a risk of persecution based on imputed political opinion. In these circumstances, the Court will consider her claim as one of imputed political opinion.

Court a clear understanding of what they are. On this record, the respondent has not sustained her burden in showing an objectively reasonable fear of persecution based on her membership or activities with these organizations.

b. Nationality and religion

Closely linked is the respondent's claim of persecution based on her ethno-religious identity as an Assyrian Christian. She asserts that she is an active member in this community, as evidence by her membership in the organizations described above. *See* Respondent's Br. at 2-3. For the same reasons discussed previously, the respondent has not shown that she will be singled out because of her activism.

Similarly, the record does not demonstrate a pattern and practice of persecution against Assyrian Christians or Christians more generally. As the State Department report indicates, ethnic and religious groups—Kurds notwithstanding—are generally allowed to conduct religious and cultural events. The general monitoring and restrictions that all religions face do not establish a pattern and practice of persecution. Nor do the isolated incidents of persecution and torture of members of her ethno-religious group presented in the record satisfy the high burden of proof required for pattern and practice cases. Again, on this record, the Court cannot conclude that any of the respondent's fears of persecution are objectively reasonable.

c. Social group

The respondent has not identified with clarity the social group in which she claims membership. Based on her arguments in this case, the Court is left to guess that she considers her family a social group and fears future persecution based on her brother's marriage to a Muslim woman and his refusal to convert.³

The (b) (6) Circuit has recognized that family can constitute a particular social group. (b) (6) however, the respondent has not proven an objectively reasonable fear of persecution on account of her membership. Once again setting aside the respondent's incredible testimony as to past harm by the woman's family and Syrian intelligence, her claim rests solely on her brother's prosecution, his fleeing to Sweden, and possibly the fact that his wife's family was angered by the union. Despite any persecution her brother might have or will face based on this marriage, she has little to back up her claim that she, too, faces, a risk of harm because of it.

³The respondent has framed her arguments regarding her brother's marriage as persecution based on religion. However, from what the Court can surmise, she is really claiming that her familial relationship with her brother—not necessarily their shared religion—is the potential source of harm. Thus, as noted above, the Court will consider these arguments as ones of persecution based on social group, rather than ones based on religion.

d. Discretion

Even if the applicant satisfies the statutory requirements for asylum, an Immigration Judge may deny asylum as a matter of discretion. See (b) (6)

(b) (6)

(b) (6) (citing *Matter of Pula*, 19 I&N Dec. 467 (1987)). Where the respondent engages in gratuitous immigration fraud to enter the country, the Court is on solid ground in denying asylum on discretionary grounds. See (b) (6)

(b) (6)

Here, even if the respondent's claims of past harm were true, she could have honestly told consular officers in Syria or officials upon her arrival that she wished to enter the United States as a refugee or asylum seeker. Instead, she entered on a K-visa, when she had no intention of going through with the marriage, and did not depart after her visa expired. Only after her ex-fiancé informed immigration of her deceit and she was placed in removal proceedings did she apply for asylum. The respondent has never claimed ignorance of the ability to apply for refugee status abroad or for asylum upon arrival in the United States. Nor has she ever indicated that she had intended to apply affirmatively for asylum, but was unable to do so before being placed in proceedings, or, as noted above, that she simply used the prearranged K-visa as a means to escape recent persecution. Were those the facts, her fraud might have been excusable. They are not, and the Court must conclude that the fraud in entering on the K-visas was simply gratuitous. As such, it is appropriate to deny asylum as a matter of discretion.

3. Withholding of Removal

An applicant is entitled to mandatory withholding of removal if she can show a "clear probability" that her "life or freedom would be threatened . . . because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. §

1231(b)(3)(A). "To meet this standard, an alien must show that he was subject to past persecution or that it is more likely than not that he will suffer persecution if he is removed." (b) (6)

(b) (6) (citing 8 C.F.R. § 1208.16(b)). Like asylum, a showing of past persecution creates a rebuttable presumption of future persecution. *Id.*

Discounting the respondent's incredible testimony as to past persecution, her claim for withholding fails. The respondent's "failure to prove persecution sufficient to establish asylum necessarily means that she cannot meet the standard for withholding of removal. This is so because to qualify for withholding of removal, one must show 'a clear probability' of persecution, which is a higher standard than that required to establish 'a well-founded fear' of persecution for asylum." (b) (6)

4. Convention Against Torture

A third avenue of relief is protection under the Convention Against Torture ("CAT").

A(b) (6)

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Unlike asylum or withholding of removal, a CAT applicant need not prove a nexus to a protected ground; however, to obtain CAT relief, an alien must establish that it is more likely than not that if removed he will be subject to torture. (b) (6)

In assessing the likelihood of torture, the Court must consider all relevant evidence, such as past incidents of torture inflicted upon the respondent, evidence that the respondent could safely relocate to another part of the country, evidence of widespread human rights violations in his country of removal, and other relevant country conditions information. 8 C.F.R. § 1208.16(c)(3)(i)-(iv). Torture is an extreme form of cruel and inhuman treatment. 8 C.F.R. § 1208.18(a)(2). It includes "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person . . . by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." (b) (6)

(b) (6) (quoting 8 C.F.R. § 208.18(a)(1)).

For the most part, the respondent's CAT claim appears to be based on the same set of facts as her asylum and withholding of removal claims, relying primarily on the alleged past persecution to establish a likelihood of torture. Once again setting aside her incredible testimony as to past harm, she cannot satisfy the high burden of proof associated with CAT relief based on this theory. Without any showing of past harm, the possibility of torture is simply too speculative on this record to warrant relief. See (b) (6)

(b) (6)

(b) (6) *Matter of J-F-F-*, 23 I&N Dec. 912, 918 (AG 2006)
(immigration judge may not string together a series of suppositions to grant CAT relief).

From her submissions, the only other aspect to the CAT claim the Court can ascertain is the possibility she would be subjected to an "honor killing." On what basis exactly the Court is unsure, as all she has done to support such a theory is submit a number of articles on honor killings. If the respondent believes she might be a victim, she has failed to articulate why this might occur. She could be suggesting that the threatened rape by Syrian intelligence officers would disgrace her family; however, the Court does not believe any such threat ever occurred. However, she has never articulated such a claim, and it would be pure speculation by this Court to interpret her submissions in this manner. In any event, the respondent has not submitted any evidence whatsoever that her family seeks to harm her for any reason, either in the United States or back in Syria.

5. Voluntary Departure

Section 240B(b) of the INA, 8 U.S.C. § 1229c(b), permits an Immigration Judge to grant voluntary departure at the conclusion of proceedings under certain circumstances. To qualify, an alien must demonstrate, for example, physical presence in the United States of a least one year immediately preceding the notice to appear, as well as clear and convincing evidence of the means and intent to depart from the United States. The respondent is not statutorily eligible for statutory departure because she does not have a year's physical presence, nor has she evidenced the means and willingness to depart.

A (b) (6)

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III. CONCLUSION

The Court finds the respondent not credible as to the instances of past persecution she claims to have suffered. The respondent has not met her burden in proving eligibility for asylum, withholding of removal, and protection under the Convention Against Torture. She is statutorily ineligible for voluntary departure. Note that the respondent has declined to designate a country of removal. Since (b) (6) has acknowledged that she is a native and citizen of Syria, the Court will direct her removal to that country.

Accordingly, the following orders will be entered:

ORDERS OF THE IMMIGRATION JUDGE

IT IS ORDERED that the respondent's application for asylum is DENIED.

IT IS FURTHER ORDERED that the respondent's application for withholding of removal is DENIED.

IT IS FURTHER ORDERED that the respondent's application for protection under the Convention Against Torture is DENIED.

IT IS FURTHER ORDERED that voluntary departure is DENIED.

IT IS FURTHER ORDERED that the respondent be removed to Syria on the charge contained in the Notice to Appear.

(b) (6)

1 steps to immediately file a request for fingerprinting within,
2 say, the next two weeks, and to make sure that the Respondent
3 actually gets an appointment, say at least three months prior to
4 the hearing. If -- yes, at least three months prior to the
5 hearing, if possible. Avail yourself of the Infopass system if
6 you don't receive a notice within that period. We'll have a
7 Syrian interpreter at the hearing.

8 JUDGE TO (b) (6)

9 Has the Respondent ever married? The reason I ask this
10 is because she entered as a fiancé.

11 (b) (6) TO JUDGE

12 Right. She -- no, she has not married.

13 JUDGE TO (b) (6)

14 Okay. Who was she supposed to marry? In other words,
15 who was she promised to marry?

16 (b) (6) TO JUDGE

17 She promised to marry (b) (6).

18 JUDGE TO (b) (6)

19 And how do you spell his last name?

20 (b) (6) TO JUDGE

21 His last name is (b) (6).

22 JUDGE TO (b) (6)

23 Will he be available at the hearing?

24 (b) (6) TO JUDGE

25 Well, she has no relations with him now, Judge, so...

A (b) (6)

1 JUDGE TO (b) (6)

2 Do you have an address for him?

3 (b) (6) TO JUDGE

4 We could get his address.

5 JUDGE TO (b) (6)

6 Yes, if you would do that and include that in your pre-
7 hearing statement and notify...

8 JUDGE TO (b) (6)

9 Would DHS provide him as a witness?

10 (b) (6) TO JUDGE

11 I'm not familiar with any reason why we would need to
12 provide him at this time, Your Honor.

13 JUDGE TO (b) (6)

14 Okay, so I take it that is a yes then?

15 (b) (6) TO JUDGE

16 I have no idea why we would be contacting (b) (6)

17 JUDGE TO (b) (6)

18 Well, let me explain, and this is only part of the case.
19 The Respondent, and I don't really mean to suggest that this is
20 the only focus. It would just be an element of the case. The
21 Respondent has admitted that she entered as a fiancé and that
22 she's violated the law by not marrying her betrothed within the
23 n90 days that the law provides. Now, the -- I see -- I'm trying
24 to explain it to you, (b) (6) I do understand you have a
25 puzzled look on your face. The manner for departure and the

A (b) (6)

1 Why don't you just continue, please? Please? I just
2 wanted to make the point for the record to show that I've made the
3 request of you, and I requested the explanation, and I've given
4 you an opportunity to explain. That's really all I intended to
5 do.

6 (b) (6) TO JUDGE

7 Okay, Judge. I'm -- well, we've submitted -- what I
8 wanted to say is we've submitted various reports concerning
9 mistreatment of people considered political opponents. We've
10 submitted a document showing that the Respondent has a certificate
11 of baptism from her church. She has membership in her church.
12 She has membership in various activity -- various organizations in
13 Syria such as the (b) (6) and the (b) (6)
14 (b) (6). She also has submitted proof that she intended
15 to marry the person who petitioned for her. That's what you asked
16 for in the Master Hearing last time, and we submitted everything,
17 including...

18 JUDGE TO (b) (6)

19 No, what I asked for was actually the person that she
20 was supposed to marry to be present so I could hear from...

21 (b) (6) TO JUDGE

22 Judge, she...

23 JUDGE TO (b) (6)

24 ...side of it.

25 (b) (6) TO JUDGE

A (b) (6)

1 Judge, she...

2 JUDGE TO (b) (6)

3 I didn't ask about documents that she intended to marry,
4 but I requested, and I'm quite willing to play the record back so
5 you can hear it, is that I requested that the parties contact him,
6 and I'm going to be asking (b) (6) this question in just a
7 minute, where is that person, so that I know what was his version
8 of it. And I asked that that person be brought in. I also asked
9 that the fiancé visa which contains statements that she made in
10 order to persuade the embassy official that she seriously intended
11 to marry someone be presented so I can at least see what she said
12 at that point.

13 (b) (6) TO JUDGE

14 Judge...

15 JUDGE TO (b) (6)

16 I'm going to be asking (b) (6) about that in a minute
17 because I asked -- in fact, I asked both side at the Master
18 Calendar for that information. That's what I asked for, not proof
19 of intent to marry. I mean, I really mean no disrespect to your
20 offer. I don't really know what value that has...

21 (b) (6) TO JUDGE

22 Well, Judge...

23 JUDGE TO (b) (6)

24 ...to her intent to marry.

25 (b) (6) TO JUDGE

1 Well, Judge...

2 JUDGE TO (b) (6)

3 And the reason is that people intend to marry, and they
4 actually do, then they marry. There's nothing stopping them in
5 this country. I mean, you just have to be legally eligible. You
6 have to have -- be a certain age and you have to not have been
7 married previously or have an existing marriage that -- the
8 requirements are very simple and the cost is very minor, something
9 like \$25 or so. You just go to City Hall, you appear before an
10 official, they give you a marriage certificate and that's it.

11 (b) (6) TO JUDGE

12 Well, why would she do that, Judge? If the parties
13 don't agree, why would she pay \$25 to get married?

14 JUDGE TO (b) (6)

15 Well, that's what we want to know, why didn't she?

16 (b) (6) TO JUDGE

17 Well...

18 JUDGE TO (b) (6)

19 In other words, this isn't somebody -- and I'm not
20 making any judgment, Mr...

21 (b) (6) TO JUDGE

22 But...

23 JUDGE TO (b) (6)

24 I don't want to be forced into...

25 (b) (6) TO JUDGE

1 Judge, you're questioning the idea of the visa. The
2 visa is...

3 JUDGE TO COUNSEL

4 No, I'm saying that -- and so I can't be misconstrued, I
5 want to express the point here. And I'm going to ask (b) (6)
6 this, and (b) (6), I just want to tell you that my purpose is
7 simply to have some explanation from the side, the Government as I
8 refer to you, for this repeated situation in which Syrian asylum
9 seekers in approximately 80 to 90 percent of them that have
10 appeared in my court over the last ten years have always come in
11 with fiancé visas and have not gotten married. Now, I think any
12 sensible person, after seeing this happen once, twice, ten, fifty,
13 a hundred times ask themselves why is this so. And so am I. I
14 don't -- it's not surprising for me to ask that question when, in
15 most of the cases that you have, (b) (6), and you handle
16 most of the Assyrian cases here, I'd say 80 percent of them, your
17 clients have come in with fiancé visas and have not married. So I
18 simply want to know how is it that this situation repeats itself
19 with such frequency...

20 (b) (6) TO JUDGE

21 Well, Judge...

22 JUDGE TO (b) (6)

23 Has anybody, and I never -- I have not in one single
24 case of those hundreds of cases seen the party who the applicant
25 for asylum is supposed to have married in front of me.

1 (b) (6) TO JUDGE
2 First of all...
3 JUDGE TO (b) (6)
4 I've never seen...
5 (b) (6) TO JUDGE
6 ...Judge...
7 JUDGE TO (b) (6)
8 I've never seen that person at all.
9 (b) (6) TO JUDGE
10 I'm sorry, I need to respond to what you're saying
11 because you seem to be making very serious allegations against...
12 JUDGE TO (b) (6)
13 No...
14 (b) (6) TO JUDGE
15 ...counsel now.
16 JUDGE TO (b) (6)
17 ...I'm just -- I'm simply...
18 (b) (6) TO JUDGE
19 No, I'm sorry, you're...
20 JUDGE TO (b) (6)
21 ...I'm simply describing...
22 (b) (6) TO JUDGE
23 You've gathered...
24 JUDGE TO (b) (6)
25 No, sir. Sir, sir, no, I'm not making...

1 (b) (6) TO JUDGE

2 Judge, you've gathered a number...

3 JUDGE TO (b) (6)

4 ...an allegation.

5 (b) (6) TO JUDGE

6 ...I don't know where you get this number from.

7 JUDGE TO (b) (6)

8 Because it comes from my observation of the cases that I
9 see, and I think that is -- I am just giving you facts. I'm not
10 making any allegations at all.

11 (b) (6) TO JUDGE

12 But...

13 JUDGE TO (b) (6)

14 I have not made any. I'm just saying this is what I see
15 on a regular basis.

16 (b) (6) TO JUDGE

17 Okay, Judge, if you'll allow me? The K-visa is for the
18 Respondent, previously the applicant or the beneficiary, to show
19 an intent to marry. They're granted on that basis. Why that visa
20 came about, why the consulate granted her, the consulate is not
21 here being represented by the Department of State...

22 JUDGE TO (b) (6)

23 That's why I want the application.

24 (b) (6) TO JUDGE

25 Well, I...

1 client who's obviously adverse to my client, and I have him sit
2 here and testify against my client, Judge? Is that what you're
3 asking me to do? Bring somebody who obviously doesn't get along
4 with my client? For some reason they don't get along, they don't
5 get married. There's obviously conflict between them. I have to
6 bring that person here to sit down and testify against my client?
7 For what? She's seeking asylum. He doesn't know anything about
8 her asylum case, nor should he. If he's an adverse party...

9 JUDGE TO (b) (6)

10 And that's not the purpose. That would not be the
11 purpose, sir. I don't think it is malpractice when the Judge says
12 yes, and I'm pointing to both of you now when I speak at this,
13 both you and (b) (6) And, again, I'm not trying to
14 personalize this. I'm just saying you're the only two people,
15 since I am just the Judge, I have no real power except my ability
16 to persuade you to do something. And when I say, look, this
17 situation has repeated itself, I need to hear the other party, I
18 expect some level of compliance. And why? Not because I expect
19 that party would necessarily know about the asylum claim, but I do
20 expect that that party would have something to say about the
21 circumstances in which the Respondent came to the United States.
22 Why is that relevant? Well, because it might speak to the reason
23 why she left the country and the circumstances in which she left
24 the country, and the representations she made to that person since
25 she encountered that person before she encountered me in a



1 hearing, and her intentions expressed both to a consular official
2 and to that person in coming to the United States. It's a part of
3 the chain of evidence, circumstantial evidence which speaks to her
4 intentions. And from those intentions, we can reasonably
5 extrapolate what happened to her, not conclusively but it does
6 tell you something about why she is here. And, I mean, I think
7 that's pretty clear. I don't think that's a matter which -- it's
8 not a radical concept. And I'm not -- I'm not saying he has to
9 say -- give evidence against her in any way. I just want to know
10 what he has to say.

11 (b) (6) TO JUDGE

12 But, Judge...

13 JUDGE TO (b) (6)

14 Asking for information from him is not the same thing as
15 saying that she is engaged in some kind of subterfuge. I'm not
16 saying that. I just say I want to hear from him. I want to see
17 the application for a visa so I can know, so I can understand this
18 phenomena. Now, is that -- if I'm a fact-finder, isn't that a
19 logical thing for a fact-finder to ask, I ask you, and to demand
20 of the attorneys the only person he has access to -- I'm not part
21 of the bureaucratic chain here in which I can just call a Joe
22 Consular official and say, Joe, could you send me a report on what
23 you did on this case. I'm prevented from doing that. I can't
24 talk to (b) (6) privately. I can't talk to you privately. I
25 can't talk to anybody. All I can do is publicly in these

1 circumstances ask you, try to persuade you, to give me information
2 I need to resolve this case in a reasonable fashion so people
3 aren't pointing the finger at me and saying the Judge is biased
4 against me because he decided it this way.

5 JUDGE TO (b) (6)

6 (b) (6) I have the same questions for you. Where is
7 -- I made a specific request for the K-1 visa application. I made
8 a specific request at the last hearing with (b) (6) I believe,
9 for that information. She said she would make an effort to get
10 it. Is there any proof that she made an effort to get it, or I
11 expressed a willingness to issue a subpoena -- yes, it was (b) (6)
12 (b) (6) on January 7, 2010, when the case was last [indiscernible],

13 (b) (6)

14 (b) (6) TO JUDGE

15 Um-hum. Well, first off, Judge, I don't have the file
16 of this. We had scheduled kind of -- the docket was switched, and
17 did had -- the cases I had now are scheduled for the 19th. So I'm
18 just looking at this, and I'm looking into our computer system to
19 see what they have. You made some mention of the availability of
20 witness, but it doesn't mention anything about that or getting a
21 visa. So I don't have any information on that. And I don't have
22 any information on what the availability of the witness is or what
23 efforts were made. I do have them looking for the file because
24 that's why -- that's why I came in here when I did. I was...

25 JUDGE TO (b) (6)

A (b) (6)

1 Well, does the Service just want to agree to the request
2 here? I mean, I -- does the Department want to agree to this
3 request? It seems like, you know, I'm wondering what...

4 (b) (6) TO JUDGE

5 What is the request?

6 JUDGE TO (b) (6)

7 The request is for political asylum for the applicant.

8 (b) (6) TO JUDGE

9 I haven't heard any evidence or heard the case. I'm
10 willing to go ahead on and listen and try the case, and then taken
11 a position after that...

12 JUDGE TO (b) (6)

13 Well, try it...

14 (b) (6) TO JUDGE

15 ...at this point.

16 JUDGE TO (b) (6)

17 ...I mean -- and I -- so am I -- I, too, (b) (6) and
18 I don't -- and that's fine. Now, there's nothing -- there's
19 certainly nothing I can quarrel with it. But let me just say
20 this. To try a case, there has to be preparation. There has to
21 be evidence. You don't just sit somebody else and start -- sit
22 somebody in front of a microphone and have them testify. There's
23 a whole series of things that have to happen for there to be a
24 sensible result. In other words, there has to be information
25 presented to the trier of fact, and it's through that crucible, if

1 ...the fiancé.

2 JUDGE TO (b) (6)

3 (b) (6) is on her Notice to Appear. (b) (6) is on her --
4 all her...

5 (b) (6) TO JUDGE

6 No, I'm talking...

7 JUDGE TO (b) (6)

8 ...application. She's known as (b) (6)

9 (b) (6) TO JUDGE

10 No, no, I'm talking about the fiancé.

11 JUDGE TO (b) (6)

12 The only information I have, and that is in our brief --
13 in our conversation in January, 2010, when (b) (6) stated
14 who he was, and I expressed an interest in having him to testify,
15 expressed that interest to (b) (6), and said I
16 would be willing to issue a subpoena if that were necessary, that
17 I wanted to hear his side of it because of the frequency, the same
18 thing I'm saying now. I haven't said anything different in the
19 past, and I've tried to be as tactful as I can in order to avoid
20 any, you know, any misunderstanding about my purpose or my
21 objective.

22 (b) (6) TO JUDGE

23 Well, I don't have any information about that, Judge,
24 about what efforts were made to get him. So...

25 JUDGE TO (b) (6)

1 Well, you know, if you can, so be it, and I would
2 applaud if we could resolve this issue. If you can't, I still
3 have to wonder why reasonable steps haven't been taken before we
4 arrived at this point. And as to the other point, I say this, and
5 again, my purpose here is not to stir up a hornets' nest here but
6 just simply to say I have continuously asked for -- repeatedly
7 asked for information from the parties, particularly from the
8 Department. And I never get cooperation. I just -- I don't have
9 them even taking baby steps to try to obtain the information that
10 I've requested. It's very frustrating to me, even in the very --
11 and to those who might think I have an inflated sense of my own
12 importance, I can assure you that I don't. I fully realize how
13 limited my authority is and how low in the bureaucratic chain I
14 am. That's why I have to plead with people. If I were in a
15 higher level, I could just do what I'm requesting. Rather, it's
16 because I'm so low in this system that I must plead with people,
17 and even when I do, it doesn't achieve my objectives. And here is
18 yet another example. So let's start with the Respondent's
19 testimony.

20 JUDGE TO (b) (6)

21 I think I placed her under oath. We can begin with her
22 testimony. (b) (6) the floor is yours.

23 (b) (6) TO JUDGE

24 Thank you. And, Judge, I just want to make sure you
25 labeled the supplement, our supplement...

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
FALLS CHURCH, VIRGINIA**

In the Matter of:

| | | |
|-------------|---|----------------------------|
| (b) (6) |) | In Deportation Proceedings |
| A (b) (6) |) | |
| |) | Before the Honorable |
| |) | Immigration Judge, (b) (6) |
| Respondent. |) | (b) (6) |

RESPONDENT'S BRIEF

I. INTRODUCTION

(b) (6), an Assyrian Christian, entered the United States on a K-1 Visa from Syria. Her planned marriage did not take place as a result of disputes with her fiancé's family. (b) (6) sought asylum based on past persecution and likelihood of future persecution on account of protected grounds: religion, ethnicity, membership in a social group, and overt and imputed political opinion. (b) (6) offered corroborative testimony and evidence. At the instance of the Immigration Judge, (b) (6) fiancé appeared and testified after (b) (6) hearing on the merits had been concluded. He testified that he voluntarily sought her out, asked her to marry him, and subsequently brought her to the United States. He also testified that while his actions were sincere, he now believes that the Respondent used him to enter the United States. He was adamant about his wish to have the Respondent be sent back to Syria. The Immigration Judge, as shown below, has based (b) (6) decision largely on the testimony of (b) (6) fiancé.

II. ARGUMENTS

A. The Immigration Judge failed to reside over this matter with impartiality, denied the respondent's due process rights, and highly prejudiced this matter from beginning to end.

From the outset, the Immigration Judge prejudiced this matter and treated the respondent as a hostile, suspect witness. The respondent sought asylum administratively but was referred to the Immigration Court. During the initial Master Hearing of January 7th, 2010, the respondent admitted all of the allegations set forth in the Notice to Appear and conceded removability. The four allegations lodged by the government were:

- 1) you are not a citizen or national of the United States;*
- 2) you are a native of SYRIA and a citizen of SYRIA;*
- 3) You were admitted to the United States at (b) (6) on or about September 4, 2009 as a nonimmigrant FIANCE-FIANCEE OF A USC with authorization to remain in the United States for a temporary period not to exceed December 3, 2009;*
- 4) You remained in the United States beyond December 3, 2009 without authorization.*

That the respondent had never been accused, by the government, of attempting to enter into a fraudulent marriage is significant, especially in light of the Immigration Judge's insinuations and allegations, and unnecessary hearing in that regard. What is more critical is that the Immigration Judge, without any allegation by the government, initiated a special hearing to determine whether or not the respondent's fiancé visa was somehow fraudulent. More disturbingly, once such hearing took place, the Judge sealed the record and did not allow any evidence that undermined the hostile witness's testimony. Instead, the Immigration Judge took the testimony of the hostile witness, with all of its clear bias, as the central consideration for the respondent's asylum claim.

The Judge had already noted in the record that the respondent admitted to not marrying her fiancé and violating the law in this regard on page 6 of the transcript: "the respondent has

admitted that she entered as a fiancé and that she's violated the law by not marrying her betrothed within the 90 days that the law provides". TR, p.6

The Immigration Judge then inquired regarding the availability of (b) (6) from the respondent – something neither of the parties had asked for nor had there been any relevance to the case. The respondent stated that no relationship existed any longer and he would not be called as a witness by respondent. The Judge persisted. (b) (6) next inquired of the DHS whether they would be calling (b) (6) as a witness, to which DHS responds no. The Judge persists in seeking an assurance from DHS to bring (b) (6) to testify in the respondents' asylum matter, despite the DHS's reluctance to do so, mainly because of the relevance. The Judge in this case took the improper role of a prosecutor seeking to go above and beyond not only the scope of the Asylum claim but also above and beyond the allegations contained in the NTA.

An important point in this case is the K-visa. Its purpose, and the reason it is issued, is for the parties to show the intent to marry. Once the person is in the United States, and for reasons that can vary, if the parties cannot or will not marry, the intent to marry is the critical issue, not whether the parties married or not. 8 U.S.C. Sec. 1184; 9 FAM 41.81 N.2 Certainly, in the case at hand, where the respondent's relief is asylum because of her past experience and the likelihood of persecution in the future on at least one of the protected grounds, the Judge's insistence that the intent is irrelevant is prejudicial to the respondent's case. TR, p.22

The matter of the marriage in this case – despite, as noted above, its irrelevance – seems to take the center stage in this case, causing the Judge to issue improper and culturally-insensitive suggestions. "And the reason," the Judge explains, "is that people intend to marry, and they actually do, then they marry. There is nothing stopping them in this country." TR, p.23. The Judge seems to completely ignore the fact that problems may result between a couple. "The

requirements are very simple,” The Judge notes regarding marriage, “and the cost is very minor, something like \$25 or so. You just go to City Hall, you appear before an official, they give you a marriage certificate and that’s it.” TR, p.23

The Judge then suddenly begins to testify – without having any record to base (b) (6) statements on- as to “this repeated situation in which Syrian Asylum seekers in approximately 80 to 90 percent of them that have appeared in my court over the last ten years have always come in with fiancé visas and have not gotten married.” TR. P.24 The respondent, of course, has now fallen into a web that the Judge has created based upon (b) (6) own experience and not the facts or the record before (b) (6). This, certainly, is unfair, given the fact that the respondent is not allowed to “cross-examine.”

The Judge’s insistence on having a clearly hostile witness come testify, despite the reluctance of the DHS to bring him, is indicative of (b) (6) bias. The Judge essentially forces the DHS: “does the Service just want to agree to the request here? I mean, I – does the Department want to agree to this request? It seems like, you, know, I’m wondering what...”. TR, p. 32.

In addition to the seemingly flagrant disregard for the testimony and evidence of the respondent, the Immigration Judge practically accuses the respondent of not being credible: “Now I am concerned that she might impeach her own testimony. I’m not suggesting she will, but if you ask her the same question, she might give a different account...” TR, p.61 It is conceded that every witness is given a rebuttable presumption of credibility. The respondent is the first person called to testify and even though the record reflects absolutely nothing that would raise doubt as to the presumption, the Judge imputes a lack of credibility during direct examination.

In reviewing the record, there appears to be a clear pattern of prejudice against the respondent and a complete failure by the Immigration Judge to make conclusions about her testimony *after* hearing all of it. The Judge has essentially concluded that the respondent has a propensity to deceive without any evidence as basis.

The entire case of the respondent has been colored with prejudice by the presiding Judge and has further been devastated by the Judges' implicit and explicit statements about the respondent and near allegations that she committed visa fraud, when the evidence, except for the statements of a clearly upset former fiancé, pointed to a clear dispute and breakup of the parties. As for the fiancé's veracity, the reluctance of the Immigration Judge to admit the evidence tendered to impeach his testimony undermines the fairness allotted to the respondent. Further, this breakup between the respondent and her former fiancé should have had no bearing on the asylum case of the respondent. For the foregoing reasons, the decision of the Judge should be overturned and this matter should be remanded.

B. The Immigration Judge gives little to no weight regarding 1) the testimony of the respondent; 2) the particular facts of the case; and 3) the country conditions of Syria.

Asylum may be granted to one who has suffered past persecution or has a well-founded fear of future persecution on account of "race, religion, nationality, membership in a particular social group or political opinion." *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985). "Fear" is defined as "a genuine apprehension or awareness of danger in another country." *Acosta, supra* at 215. "Persecution" means "a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive." *Acosta, supra* at 216.

The respondent gave detailed accounts regarding several frightening, threatening and violent circumstances that she encountered establishing past persecution and leading to her fear of future persecution. At no time was the respondent found incredible as to the incidents cited.

The Respondent's claim for asylum is on account of her religion, ethnicity, and membership in a social group, and overt and imputed political opinion. In addition to providing credible testimony, the respondent documented her case extensively. The Respondent is an Assyrian Christian from Syria.¹ She is a member of the (b) (6) as well as the (b) (6)

(b) (6) (Letter from the Diocese of the (b) (6), Exhibit #3, Tab F: "(b) (6) has taught the Assyrian Language in the Village of (b) (6) from 2006-2008 and was quite diligent and active as a teacher;" Affiliation Application to join the (b) (6) Declaration Assigning Respondent Head of Committee of (b) (6) Certificate of Membership in the (b) (6) Certification Letter from the (b) (6) (b) (6) and Certification Letter from the (b) (6) stating: "[Respondent] did many services that the organization assigned to her. She set an example of a member that is effective and active in helping the elderly and the poor."). The foregoing exhibits were entered into the record and accepted by this Honorable Court. Not a single document or certificate was questioned or disputed.

The Respondent testified that she was active in her community and sought to protect her culture and heritage.² She was questioned, assaulted and beaten.³ In fact, the Respondent submitted that on several occasions she was threatened with sexual assault and told that she

¹ See Certificate of Holy Baptism, Supplement to the Asylum Application of (b) (6) Exhibit #3, Tab E.

² See Statement of (b) (6), Exhibit #3, Tab Q, Line 5.

³ *Id.*

would be taken to Damascus.⁴ The Respondent and her family were also targeted based on her brother's impermissible relationship with a Muslim woman. Accordingly, the Respondent's brother was threatened to be killed and forced to flee the country.⁵ The Respondent provided this Court with evidence that her brother was not only prosecuted and persecuted by the Syrian government, but also by the family of the Muslim woman.⁶ The Syrian government's criminal order tendered by the Respondent and admitted into the record states, in relevant part:

"Based on the police report and the prosecutor's memorandum, the defendant (b) (6) married a Muslim woman. Such an act is considered a crime against the defendant under the provisions of the Criminal Law and the Islamic Law (Sharia), also the fact that a Christian man is not permitted to marry a Muslim woman. The defendant fails to attend the trial, his legal representative stated that his client's life is in danger being wanted by the girl's family and also he is vanished."⁷

The Respondent testified that the problems encountered by her brother as well as her activism on behalf of her people, which are imputed political opinions and ethnic activism, caused her to be targeted by the Syrian government, an Arab nationalism authoritarian regime. She was beaten, assaulted and harassed by agents of the Syrian government; all of these accounts were corroborated by the Respondent's testimony and through government reports. The Respondent still genuinely fears that she would be questioned and tortured by the Syrian government if she were to be returned to that country.⁸

The Respondent's testimony is further corroborated by the country conditions in the record. According to Amnesty International's *Urgent Action*, "torture and other ill-treatment are widespread in Syria's detention and interrogation centers...[with] freedom of expression and

⁴ See Exhibit #3, Tab Q, Line 6.

⁵ See Exhibit #3, Tab Q, Line 4.

⁶ Exhibit #3, Tab G.

⁷ See Order of (b) (6) Judge of Criminal Court in Hasske, Exhibit #3, Tab G.

⁸ See Exhibit #3, Tab Q, Line 9.

association [being] strictly controlled.”⁹ The same organization reports that, “[p]eaceful critics of the Syrian authorities, members of human rights organizations and others suspected of being political opponents risk arrest, harassment and persecution.”¹⁰ According to the U.S. Department of State, minorities and dissidents face arbitrary detentions, arrests, and torture, including violent resistance to peaceful assembly and association: “On March 8, [2009], security forces raided several International Women’s Day celebration sites in Qamishli, forcibly breaking up at least one group of approximately 100 women, according to human rights observers.”¹¹ As for the Christians of Syria specifically, they are “strongly restricted in proclaiming their faith by the Muslim majority. They face historical and cultural barriers and possible imprisonment for evangelistic efforts. The very few Muslims who have believed in the Messiah face persecution from family and government and the difficulties of isolation.”¹² Even attorneys are punished by their respective bar associations for engaging in any human rights work.¹³

While The Respondent has offered corroborative testimony and evidence, including extensive country-condition reports, and has shown that she has endured past persecution and is likely to endure future persecution on protected grounds, the government has failed to rebut the same in any meaningful way; her testimony and evidence stand undisputed and her evidence undiminished.

During cross-examination, the respondent testified consistently and remained unimpeached. In (b) (6) written decision, the Immigration Judge credits the respondent with being an Assyrian Christian, a member of various political organizations and that her brother married a

⁹ Amnesty International, *Urgent Action*, December 8, 2009.

¹⁰ Amnesty International, *Urgent Action*, November 25, 2009.

¹¹ U.S. Department of State, 2009 Human Rights Report: Syria, p.21.

¹² The 30-Days Prayer Network, *Syria - Jesus Impact*, <http://www.30-days.net/muslims/featured/syria-impact>.

¹³ See Amnesty International Report. <http://www.amnesty.org/en/library/asset/MDE24/001/2011/en/f468b1dd-dbcf-4500-9e00-9dfb6ce777c9/mde240012011en.html>

Muslim and suffered problems because of it. In the same breath, the Judge attempted to diminish her claims of past mistreatment because of the dispute with her fiancé, improperly calling into question her credibility.

In addition to ignoring the respondent's credible testimony and evidence, the Immigration Judge failed to give proper weight or consideration to country conditions in Syria while considering the facts presented by the respondent. The Judge first concedes that Syria is under an authoritarian regime and members of the government and security forces have committed serious human rights abuses, including torture and that freedom of association and expression are strictly monitored or controlled. Additionally, and as noted above, the State Department Report notes that the Syrian government restricts full freedom of choice in religious matters. These assertions come from DHS submission of State Department 2009 Report of Syria, entered into the record. These assertions are consistent with respondents' testimony and descriptions of the abuses, threats and violence she was subjected to at the hands of government officials.

In assessing the respondents' claim under political opinion, the Judge writes: "there is nothing else beyond her own assertions to show that the government would care about these associations". The Judge performs an about face on the State Department Report indicating Syria's governmental scrutiny of organizations and restriction of freedom of association and isolates the respondents' testimony as mere "assertions".

In further considering this element of her Asylum application, the Judge agrees that the respondent belongs to certain organizations, some of which are religious based, but because the respondent fails to provide an independent report on the treatment of these groups, (b) (6) concludes that she has failed to meet her burden.

What the Judge fails to consider is the non-existence of such reports could be the result of a resistance by members of these organizations to file official complaints since doing so would allow governmental officials to easily identify these groups and for fear of additional and a more violent response. As a matter of fact, the respondent testifies that she refused to file official complaints regarding her persecution for fear of retaliation and a belief that nothing would be done. Finally, the Judge states that "the record does not demonstrate a pattern and practice of persecution against Assyrian Christians" in Syria, yet on the record during trial, the Judge admits to having presided over many Asylum cases from Syria.

The respondents' testimony is unimpeached and consistent with country conditions and her Asylum application should have been granted on the basis of political opinion.

The Judge next assesses the respondents' claim of Asylum under nationality and religion. The record clearly demonstrates the respondents association and membership in a particular Christian religious group and organizations of a specific nationality; Assyrian. The Judge states in (b) (6) written decision that the respondent "has not shown that she will be singled out because of her activism".

The respondent testified credibly that not only was she in fact singled out because of her activism, but threatened with sexual assault and kidnapping by governmental officials. The specific threat of kidnapping is corroborated by the State Department notes of Syria regarding the targeting of individuals and their mysterious disappearances by those attempting to engage in freedom of association. However, the Judge concludes that the respondent's fears of persecution are not objectively reasonable and on that basis, denies Asylum. This conclusion contradicts the unimpeached testimony of the respondent, the State Department Report to which the Judge has relied upon, the submissions of proof of membership and the articles of mistreatment of political

opponents in Syria. The highly prejudicial and improper application of evidence to the requirements of Asylum lead to denial on the basis of nationality and religion.

Finally, the Judge evaluates a claim for Asylum under social group. In (b) (6) (b) (6) the (b) (6) Circuit recognized that a family can constitute a particular group. The respondent was targeted because of the actions of her immediate family, specifically, her brothers' marriage. She testified to threats and harassment made to her because of those actions and further testified that her brother fled Syria to Sweden because of it. The Judge concludes, despite having been threatened, confronted and harassed, and despite the fact that she has been identified as the sister, "she has little to back up her claim that she, too, faces a risk of harm". For the foregoing reasons, the Judge's decision should be stricken and the respondent should be granted asylum.

C. The Immigration Judge ignored evidence of credibility and improperly concluded the respondent to be incredible. The respondent testified and her testimony is undisputed.

The testimony of the government's witness, the Respondent's ex-fiancé, is 1) irrelevant as to the Respondent's claim for asylum and 2) highly prejudicial. Specifically, the irrelevant attacks against the Respondent's character have the prejudicial effect of skewing this Court's view of the Respondent and her claim for asylum. In considering asylum claims, the Immigration and Nationality Act (hereinafter "Act") does not focus on the means by which an individual has entered the United States, but that said person is now at or within the borders of the United States and is seeking refuge on account of the five protected grounds. INA §101(a)(42)(A), 8 U.S.C.

§1101(a)(42)(A). Nevertheless, the Court insisted upon evaluating the Asylum case by evaluating the means of entry, which the respondent had shown was legal and proper.

In this case, the Court insisted on the testimony of the Respondent's ex-fiancé, who stated that he believed the Respondent had used him for purposes of entering the United States. The same witness also noted, however, that it was *he* who sought out the Respondent, that it was *he* who solicited her to come to the United States to be with him, and that his actions were *entirely* volitional. He testified that his actions did not in any way stem out of fraudulent intentions. The visibly emotional testimony of the Respondent's ex-fiancé is that of a heart-broken ex-lover who wishes to punish the Respondent for the pain he now feels.¹⁴ This Court's insistence on the ex-fiancé's testimony was and continues to be both irrelevant as to the relief sought and highly prejudicial. It is particularly important to note that the Judge had precluded any evidence that the respondent presented to show that the witness is not only biased against her, but actually not reliable.

One of the most glaring factors that contradict the Courts' conclusion of the respondents' intention not to marry (b) (6) was (b) (6) testimony regarding the engagement party that took place in Syria. More than 200 people attended this celebration and the government witness testified and admitted to this on cross-examination. Some of those in attendance belonged to his family and others to her family. Pictures submitted as evidence bolster the events that took place. The respondent had every intention to marry (b) (6) before entering

¹⁴ See Letter of (b) (6) to the U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement, Dated October 5, 2009, Exhibit #5: "I feel that I have been taken advantage of and used, just so that (b) (6) and her parents could come to the United States. I will not take further responsibility for her and hope that the U.S. government will take appropriate actions to send her back to Syria as she not only deceived me, but also the United States government." The fact is that the respondent's parents are not in the United States. Further in his letter, (b) (6) claims that the respondent's brother has also not married his fiancée. This was shown to be false in a submission that the Immigration Judge did not allow to enter the record.

the United States by these acts alone. (b) (6) further testified that he was in constant contact with the respondent over the telephone as they planned their wedding.

The respondent also testified that she had the full intention to marry upon her arrival to the United States. Her statement is completely corroborated by her actions evidenced with supporting documents submitted the Court ignored. These documents included a letter from the banquet hall confirming booking the wedding, receipt of payment and copy of wedding invitation, the letter and copy of the work schedule from the bridesmaid's employer and copies of receipts for bridesmaid's dresses, letter from the priest who was to officiate at the wedding, and so on. The Court seems to have ignored all of this evidence.

The affidavit of (b) (6) is critical when evaluating the respondents' intentions¹⁵. She states that the respondent accompanied (b) (6) and two other bridesmaids to the shop and ordered the dresses they would wear for the wedding. This factor contradicts the Courts' conclusion that "the respondent is not credible on the issue of her intentions to marry (b) (6) (b) (6) In reviewing the record and all of the evidence it contains, a neutral party would very likely come to the reasonable conclusion that it is not likely that a person would go to such extremes -- as did the respondent -- if her intention was merely to come to the United States. If that were the case, she could have simply given up on her fiancé right at the airport, and not have engaged in the preparation that she did. Further, even if one were to hypothetically assume that the respondent had changed her mind about marrying the fiancé, such evidence does not go to the heart of her asylum claim. The Court in this case has taken the Asylum case of the respondent and transformed it into a criminal prosecution of visa fraud, completely ignoring

¹⁵ It is important to note that witness (b) (6) testified in support of the respondent and was cross-examined. She noted that she took off from work and purchased a dress for the wedding. See Affidavit of (b) (6)

relevant facts and testimony in exchange for the testimony of a biased, ex-lover of the respondent and a theory of fraud in the mind of the Court.

In addition to the irrelevant and highly prejudicial nature of the ex-fiancé's testimony, such testimony has proven to be riddled with falsities as his motivations, pursuant to his own testimony, stem from having the Respondent removed from the United States. In one instance during cross examination he makes it clear that he wants to see the respondent removed from the United States because his heart is broken. This, certainly, cannot and should not be the basis for rejecting the asylum claim of the respondent.

III. CONCLUSION

For all of the reasons noted above, the respondent respectfully calls upon this Honorable Board to grant the respondent's case for asylum, or, in the alternative, remand this matter to another Judge pursuant to the arguments made herein.

Respectfully submitted

(b) (6)

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