



Detail

Complaint Number: 768

Immigration Judge: (b)(6)

Complaint Received Date: 06/17/13

Current ACIJ
Fong, Thomas Y. K.

Base City
(b)(6)

Status
CLOSED

Final Action
Oral counseling

Final Action Date
06/21/13

Past ACIJ:

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

Complaint Narrative:

(b)(6) the BIA remands the decision with no analysis and there is dissenting opinion from one of the 3 BM's. While the IJ's findings of "fabrication" may be speculative, such expressions do not denote bias or warrant remand.

Complaint History	
06/19/13	Complaint referred to ACIJ
06/19/13	Database entry created
06/21/13	Oral counseling

Sep 11, 2013

1 of 1

(b) (6)



Memorandum

Subject	Date
(b) (6) (BIA June 13, 2013)	June 17, 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 June 13, 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: JUN 13 2013

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -
Present without being admitted or paroled

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of China, appeals from the Immigration Judge's January 12, 2012, decision denying his application for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), as well as his request for protection under the Convention Against Torture ("CAT"). See 8 C.F.R. § 1208.16(c). The record will be remanded.

The respondent argues that he suffered past persecution, and has a well-founded fear of future persecution, on account of China's coercive family planning policy. We find remand to a different Immigration Judge is warranted to conduct a de novo review of the record and to issue a new decision assessing the respondent's credibility. If the respondent is found credible, the Immigration Judge should determine whether the respondent has set forth a valid claim under *Matter of J-S-*, 24 I&N Dec. 520 (A.G. 2008). See also *Jiang v. Holder*, 611 F.3d 1086 (9th Cir. 2010).

Accordingly, the following order is entered.

ORDER: The record is remanded to the Immigration Court for assignment to a different Immigration Judge and for further proceedings in accordance with this opinion.



FOR THE BOARD

Board Member Roger A. Pauley respectfully dissents and would affirm the Immigration Judge's decision due to many significant inconsistencies in the respondent's claim (I.J. at 14-20). While the Immigration Judge's further findings of "fabrication" may be speculative, such expressions do not denote bias or warrant remand, much less remand to a new Immigration Judge.

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

(b) (6)

File: A (b) (6)

January 12, 2012

In the Matter of

(b) (6)

RESPONDENT

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IN REMOVAL PROCEEDINGS

CHARGES: Section 212(a)(6)(A)(i) alien present in the United States without being admitted or paroled or who has arrived in the United States at any time or place other than designated by the Attorney General.

APPLICATIONS: Asylum, Withholding of Removal, and relief under Article 3 of the United Nations Convention Against Torture.

ON BEHALF OF RESPONDENT: (b) (6)

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

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 37-year-old, allegedly married, native and citizen of the People's Republic of China who entered the United States at or near an unknown place of entry on an unknown date of entry. Respondent was not then admitted or paroled after inspection by an immigration officer. On February

13th, the year 2007, the Department of Homeland Security issued a Notice to Appear against the respondent (see Exhibit 1). At a master calendar hearing, respondent through counsel admitted allegations 1, 2 4 and conceded the charge of removability. However, the respondent denied allegation 3 claiming that he entered the United States at (b) (6) on or about April 5th, the year 2006. Respondent through counsel declined to designate a country of removal and the People's Republic of China was designated. Respondent has applied for relief in the form of asylum, withholding of removal, and relief under Article 3 of the United Nations Convention Against Torture.

STATEMENT OF THE FACTS

The respondent testified that he is 37 years old and that he was born in Fuqing, Fujian, China. Respondent testified that he is married to (b) (6). Respondent testified that he married on August the 1st of the year 2000. Respondent was queried as to whether or not respondent had any proof of his marriage other than information contained on the household registration document respondent submitted (see Collective Exhibit 4, Sub-exhibit B) and the respondent responded that he did not. Respondent then testified that his family was trying to get information and send the information, but they have not sent it. Specifically, the respondent testified that his family was attempting to get the marriage certificate and evidence to establish that he had been detained and beaten. Respondent was

then questioned as to how long his family members had been attempting to obtain such information and the respondent indicated since he had arrived in the United States. The respondent was questioned as to why he was not able to obtain all this information during the past six years and the respondent responded because he had been persecuted by members of the family planning unit and that he had escaped and that it was difficult to openly get any supporting documentation.

The respondent testified that he left the People's Republic of China because he had been persecuted by officials from the family planning unit. The respondent was inquired as to how this occurred and the respondent went on to testify about the fact that his wife had gotten pregnant and was subsequently forced to undergo an abortion after having been in hiding. The respondent then went on to testify that he and his wife married on August 1st of the year 2000. The respondent was questioned as to whether or not he had gotten permission to marry and the respondent initially responded no, then the respondent testified that he and his wife did get permission to marry on August 1st of the year 2000. Respondent was then questioned about that date and the respondent reiterated that he got married on August 1st of the year 2000, and that is when his marriage certificate was issued by government authorities.

The respondent testified that he and his wife began dating in January of 1999. The respondent testified that his

wife became pregnant in April of 1999. The respondent testified that after he learned that the woman he was dating was pregnant, they requested permission from government authorities on April 1st of 1999 to get married. Specifically, respondent testified that they went to the family planning office in (b) (6) Town. The respondent testified that before his wife actually would have been able to have gotten married, that she would have to have undergone a gynecological test. Specifically, respondent testified that before a woman gets married in China she would have to undergo such a test. The respondent also testified that in China the legal age for a male to get married is 22 while the legal age for a female to get married is age 20. The respondent was then questioned as to what the problem was with regard to the respondent marrying his then girlfriend if she was already 20 years old. The respondent at one point testified that when we attempted to apply for the marriage certificate she was "just 20". Then the respondent went on to testify about the fact that in China apparently the gestation period is counted such that when a child is born that child is considered to already be age 1. The respondent then went on to testify that at the time they had requested permission to get married that his then girlfriend later wife was 19 years old. The respondent was questioned as to her specific date of birth and the respondent unequivocally testified that she was born on February 27, 1978.

The respondent went on to testify that he was told by

family planning officials that the reason why he and his then girlfriend could not get married was because she had not reached the legal age. Respondent testified that the authorities also noted the fact that she was pregnant and that she would have to undergo a forced abortion. The respondent was questioned as to whether or not he actually had a birth certificate for his wife and the respondent testified that he did not have such a birth certificate on him, although at one point the respondent testified that he thought that he did have a birth certificate.

The respondent was questioned at length by the Court with regard to determining the age of his wife when they went to request permission to get married from members of the family planning unit in April of 1999. Respondent was given an opportunity to calculate how old she was when they did indeed attempt to get the marriage certificate. The respondent unequivocally and continuously stated throughout these proceedings that at the time she and he went to get the request that she was 20 years old. The respondent testified that at the time they went to get the request that she was then three months pregnant. The respondent went on to testify that they defied the orders of the family planning unit that she undergo an abortion and that she subsequently went into hiding. The respondent testified that his wife then went into hiding with relatives. The respondent did go on to testify that his wife subsequently did give birth to a son on August 4th of the year

1999. The respondent did not provide any type of birth certificate as relates to his son. The respondent went back and forth initially with regard to the availability of the document and then subsequently stated that this was one of the documents that his wife had planned on sending him but that he had not received such a document. The respondent was also questioned again about the fact that he did not have any type of marriage certificate establishing that he did indeed get married on August 1st of the year 2000. The respondent, at one point, thought that the document had been given to his attorney, but then the respondent later testified that the document was still in the People's Republic of China. Indeed, the Court notes that during the course of these proceedings the respondent was questioned about the whereabouts of his child's birth certificate. The respondent at one point testified that he gave the document to his attorney, then the respondent testified that the document is at home in China, then the respondent testified that he misspoke about having given the document to his attorney. The respondent was then questioned about the marriage certificate and testified that he was awaiting the delivery of that document as well. The respondent testified as to what the problem was with obtaining the document and the respondent went on to testify that his wife had gotten pregnant a second time, that she had to go into hiding and that she had misplaced the documents. The respondent testified then at one point in time

that he had contacted his wife but that his wife said that she was still attempting to obtain and gather these documents and that it had, you know, taken six years. The Court queried the respondent as to the fact that it had taken six years and the respondent still did not have either of these documents and the respondent acknowledged this fact.

The respondent testified that on the date of his marriage to his wife, on August 1st of the year 2000, that government officials forced his wife to wear an IUD. The respondent went on to testify that his wife was having many problems with the IUD. Respondent testified that he and his wife, a couple of days after getting married, actually went to the family planning unit and requested that the IUD be removed. However, respondent testified that the family planning officials would not permit his wife to have the IUD removed. The respondent then testified that in March of the year 2005 he and his wife went to a private hospital where the IUD apparently was removed secretly.

The respondent testified that approximately a month after the IUD had been removed that his wife became pregnant in April of the year 2005. Respondent testified that his wife went into hiding at the home of relatives. Respondent then testified that his young son had missed his mother so much and was crying that respondent had no choice but to take the little boy to visit his mother. Respondent testified that he made several

visits with his son to visit his wife and that apparently authorities had followed him and discovered that his wife had gone into hiding. The respondent testified that, the day after authorities discovered that his wife had gone into hiding, she was forcibly taken to the (b) (6) Hospital where she underwent an abortion on October 25th of the year 2005. The respondent was questioned as to whether or not he had any documentary evidence to establish that his wife had to undergo a forced abortion on October 25th of the year 2005, and the respondent testified that "we had requested the records many times but we were refused because of a violation of the family planning policy." The respondent went on to testify that at the time his wife underwent the abortion that she was actually eight months pregnant. The respondent testified that he had learned that the baby apparently had been born alive and respondent acknowledge that that would mean that if the baby were born alive that government authorities would actually have had to kill the baby. The respondent testified that after his wife underwent this abortion that she was bleeding quite profusely. Respondent testified that then family planning officials apparently came to his wife and requested that she undergo a tubal ligation. Respondent testified that he informed the authorities that his wife was too weak after having the abortion and that his wife should not be subjected to such a procedure. The respondent testified that he then took his wife back home.

The respondent testified that on November 2nd of the year 2005, town officials as well as some military officials barged into his home and arrested him for violating the family planning policy. Respondent testified that he was taken to a dark room where he was tied up and then dragged to an interrogation room where he was hung and then apparently slashed with some type of belt. Respondent testified that he received this treatment because he had been accused of violating the family planning policy. Respondent specifically testified that they hung him apparently upside down and beat him with a belt and then respondent even testified that they "tortured him by placing some type of fire underneath his feet." Respondent testified that he was detained from approximately 5 p.m. and that at 11 p.m. he was able to escape. Respondent testified that an old schoolmate of his was a guard and so helped respondent to escape. Respondent testified that he managed to successfully escape and then he went to Guang Zhou with the help of friends.

Respondent testified that arrangements were made for him to leave the People's Republic of China and that he used a passport in the name of another individual. Respondent testified that arrangements were made with a snakehead and that he departed People's Republic of China on February 1st the year 2006. Respondent testified that he traveled to Peru and remained in Peru for at least a half a month. Respondent then

testified on cross-examination that he believes that he traveled to Guatemala. He is unclear as to whether or not it was by plane or by road but nonetheless respondent went to Mexico and then arrived in the United States on April 5th of the year 2006. Respondent testified that he did not have the passport with him that he used to travel from China to Peru because it had been taken away by the snakehead.

Respondent testified that his wife remains in China and still has had encounters with members of the family planning unit who are looking for the respondent because of his escape in November of 2005. Respondent testified that he could not return to China because government officials are still looking for him. Respondent also testified that he could not reside elsewhere in China.

The respondent was questioned on cross-examination about the fact that at one point he claimed that he could not get documentary evidence to corroborate some aspects of his claim because he had escaped from China, yet respondent was able to provide an updated household registration document that was issued in 2007 (see Collective Exhibit 4, Sub-exhibit B). The respondent initially testified that he had the document with him then the respondent testified that he got the document with the help of a friend. The respondent was then questioned as to why his friend could not help obtain additional documents and the respondent went on to testify that his friend named (b) (6)

worked in a particular department and was able to obtain the household registration documents. The respondent was then questioned as to when he obtained the document, namely the household registration document, and the respondent testified after he left China and had applied for asylum. The respondent then went on to testify that his friend did help him to obtain the document but that he could not remember whether or not he obtained the document for the respondent in 2006 or 2007.

The respondent went on to testify about his alleged detention in November of 2005. The respondent was questioned as to where he was detained and the respondent testified that he was detained in a small room in a basement of his village. The respondent then went on to testify that he was apparently detained in a storage room at the village committee office. Respondent initially testified, when asked how long he had been detained, a couple of hours and the respondent testified that he was detained from approximately 5 p.m. until his escape around 11 p.m. Respondent testified that he did go into hiding immediately after his escape, which would have occurred on November the 5th of the year 2005. The respondent was questioned about the fact that the respondent's national identity card (see Collective Exhibit 4, Sub-exhibit C) clearly indicates that it was issued on November 8th of the year 2005 by the local public security bureau. Respondent was queried as to how it was he obtained this document if he was in hiding. The

respondent at one point testified that he obtained the ID card before he was detained. Then the respondent testified that he apparently had applied for the ID card and that it was issued later on. The respondent at one point testified that he had applied for the ID card in advance and that it was later issued. Then the respondent finally testified that it was a friend who secretly was able to help him obtain the ID card and that that friend just happened to be (b) (6) the individual who apparently had helped him obtain the household registration document. The respondent was questioned as to the issuance date and the respondent testified that he simply did not know the date of issuance, then the respondent testified that he could not recall the month that the document was issued and that it had been such a long time. The respondent was then questioned as to whether or not he recalled the year that the document was issued and the respondent then testified, I believe that the document was issued the year before I escaped in 2005. The respondent then testified that he saw the ID document after his arrival in the United States.

The respondent testified on cross-examination that the passport that he used to travel from China to Peru was not in his name. Respondent testified that he arrived in Peru in February of 2006 but did not come into the United States until April of 2006. The respondent was then questioned as to whether or not he had any idea of the countries where he was between

February and April of 2006 and the respondent testified that he was in Peru, Guatemala, and then Mexico before traveling to the United States.

The respondent on cross-examination was asked about his obtaining his own notarial birth certificate. The respondent then testified that it was yet the same family friend, (b) (6), who helped him to obtain the notarial birth certificate. Respondent testified that (b) (6) actually helped him obtain the household registration document, the national identity card, and lastly the notarial birth certificate. The respondent testified that he did not receive any of these documents until after he left China. Respondent testified that his wife informed him that this friend she had helped obtain these documents. Respondent was then questioned as to when he actually received the documents and the respondent interestingly enough testified that he received the documents after his arrival in the United States on April 5, 2005. The respondent was then queried about this discrepancy, as respondent had previously testified that he had arrived in April of 2006 and the respondent testified that he simply misspoke. The respondent went on to testify that he had never seen the notarial birth certificate before in the People's Republic of China.

ANALYSIS

The Court notes that respondent filed his application

for asylum on December 19th of the year 2006. Hence, the respondent's application will be reviewed in accordance with the provisions of the REAL ID Act as relates to both credibility and providing corroborative evidence. The Court notes that in this case the basic thrust of respondent's claim was that he and his girlfriend attempted to get married with the permission of government officials back in April of 1999 after learning that she was pregnant and government officials would not allow them to marry. Respondent testified that the reason why he and his wife were not allowed to marry in April of 1999 was because of her age. The respondent specifically, and at length, explained to this court that in China a male must be 22 before he can marry and a female must be age 20 before she can marry. The thrust of respondent's claim had been that apparently his wife had not reached age 20. The Court notes, however, that there was tremendous inconsistencies with regard to respondent's testimony concerning the age of his wife. At one point, the respondent testified that she "just turned 20." The respondent then testified at one point that she was 19 at the time that they attempted to request permission to get married. The Court notes a close review of respondent's own declaration clearly indicates that when the respondent and his wife, (b) (6), began dating that she was only 20. The Court notes that respondent's testimony is internally inconsistent and contradictory. Essentially, the respondent claims that at the time he and his

wife attempted to get married that she was not age 20 but the Court notes that even according to western calculations she was born on February 27, 1978, that she would have reached age 20 in 1998, well before she and respondent were even dating. The Court also notes that even based on respondent's own calculations with regard to the Chinese perspective on age, that respondent's wife in 1998 would have been age 20 and in 1999 would have been age 22. The respondent has essentially testified that with regard to calculating age in China that the gestation period does count such that at the time of birth an individual is already age 1. The Court notes that as of April 1st of 1999, respondent's wife would have been 22 years old. Hence the Court finds respondent's testimony about the fact that he and his wife could not marry because she was 20, or under 20, wholly and completely incredible. The Court even gave the respondent an opportunity to calculate the correct date and the respondent continuously referred to the fact that his wife was 20. But assuming that is correct, under Chinese law as explained to his court by the respondent, she would still have been able to have marry the respondent. The Court simply believes that in this case the respondent has not provided credible testimony and indeed became confused with regard to the law and with regard to his testimony concerning the date in which he and his wife attempted to get married. The Court believes that as of April 1, 1999, in accordance with

respondent's own calculations, that his wife would have been 22 years old and that legally they could have married and there would be no such impediment.

The respondent went on to testify that his wife was told that she had to undergo some type of forced abortion. The respondent then went on to testify that she went into hiding and subsequently gave birth to their son in August of 1999. The Court queried the respondent as to whether or not he had any documentary evidence with regard to the birth of his first son and the respondent did not have any such documentary evidence. The Court notes that respondent has been aware since 2006 that he needed to get corroborative documentary evidence, yet the respondent has provided no such evidence with regard to even the birth of his son, let alone his marriage. The respondent has not provided any documentary evidence other than a household registration document showing the existence of a son as well as a wife. At this point, the Court seriously questions whether or not the respondent is even married. The Court notes that the respondent went back and forth with regard to having documents that relates to his marriage as well as the birth of his son. The Court believes that the respondent does not have any such documents because the Court believes that all of his testimony regarding his marriage and the birth of his son in August of 1999 is wholly and completely fabricated. The Court does not believe this respondent has provided credible testimony and,

more importantly, the Court does not believe that the respondent has given a reasonable explanation as to why he was unable to obtain, at a minimum, a marriage certificate as well as a birth certificate. The respondent claims that his friend, (b) (6) was able to obtain the household registration document and national identity card as well as respondent's own notarial birth certificate, but yet was not able to obtain respondent's marriage certificate and his son's birth certificate. This is simply unreasonable. The Court believes that if this individual was able to obtain a household registration document, a notarial birth certificate for the respondent, as well as a national ID card for the respondent, then surely he could have obtained a copy of respondent's marriage certificate and a copy of respondent's son's notarial birth certificate. The Court believes that those documents have not been submitted because respondent is not married and respondent does not have a child. And even if he does, the Court finds that there has been no reasonable explanation as to why these documents have not been available when he was able to obtain household registration document, national ID card as well as his own notarial birth certificate.

The respondent also testified that his wife forcibly had an IUD implanted on August 1st of the year 2000 and that this IUD was removed in secret at a private hospital in March of 2005. The respondent testified that he did not have any such

documentary evidence to establish that his wife had an IUD removed because, apparently, they paid under the table and this was illegal. The Court believes that if the hospital was bold enough to take out an IUD in March of 2005 then, surely, to have provided some type of documentary evidence to establish that the IUD had been removed would be easy. The Court does believe that the respondent should have provided some type of documentary evidence, even to establish that his wife had an IUD removed, particularly at a private hospital. The Court does not find respondent's explanation to be reasonable for the lack of that document.

The respondent then went on to testify that he found out that his wife was pregnant in April of 2005 and that as a consequence she went into hiding. The respondent then testified that his young son missed his mother so much that he decided to basically jeopardize his wife's safety by taking his son to see her during the time that she was pregnant. The respondent indeed testified that he went to see her several times and apparently respondent was aware that the authorities were following him. Nonetheless, respondent testified that on the last occasion when he went to see his wife, that his wife was taken by government authorities, specifically on October 25, 2005, to the hospital where she was forced to undergo an abortion when she was eight months pregnant. The respondent testified with a little bit of skepticism regarding the fact

that his wife apparently underwent the abortion but that the baby had been born alive. The Court pointed out to the respondent that if the baby had been born alive then that would mean that the hospital authorities would have actually taken a live baby and killed the baby. The respondent did indicate that that is what happened. The Court looks with tremendous skepticism, in fact, does not believe this aspect of respondent's testimony. But more importantly, the Court notes that the respondent did not present any documentary evidence to establish that his wife had undergone an abortion. The respondent claims that they attempted to obtain documents but, because they had violated the one child policy, that his wife was not able to obtain such documents. The Court believes that even if the respondent did not have the specific document from the hospital, respondent has numerous family members who continue to reside in China and they could have perhaps written letters corroborating that respondent's wife indeed had to undergo a forced abortion during her eighth months of pregnancy. In this case, the Court believes that the respondent does not have such a document because respondent's alleged wife did not undergo any type of abortion. The Court believes that in this particular case the respondent was never married and hence the respondent was unable to obtain any documentary evidence about a forced abortion. The Court believes that respondent did not have that document because no such abortion occurred and, again,

the respondent was never married and the Court believes that respondent does not have any child.

The respondent also testified that on November 2nd of the year 2005 government officials barged into his home and took him to the village committee basement where he was subjected to physical abuse because of his violation of the family planning policy. The respondent testified that apparently he was hung upside down, beaten with a belt, and that they actually tortured him with placing fire underneath his feet. The Court notes that this last aspect of testimony regarding authorities placing fire underneath his feet is not contained in respondent's own asylum statement. The Court believes that this aspect of respondent's testimony has been wholly and completely fabricated. The Court does not believe that the respondent was ever detained by town officials for violating the one child policy on November 2nd of the year 2005. The Court believes that this aspect of his testimony was even fabricated.

The Court actually queries where respondent was on November 2, 2005. Respondent claims that he entered the United States on April 5th of the year 2006 but the Court does not believe this to be the case. The respondent, on cross-examination, at one point even stated that he entered the United States or arrived in the United States on April 5th of the year 2005. The Court notes that it would make a tremendous difference in terms of whether respondent would even be eligible

for asylum or only withholding. Respondent filed for asylum in December of 2006. If the respondent had actually arrived in the United States in April 2005 he surely would have been beyond the one year filing deadline. The Court, at this point, truly has no idea as to when the respondent arrived in the United States. Hence, the Court believes that there is a strong argument that the respondent is not really even eligible for asylum and is only eligible for withholding of removal. Even if this were the case, the Court simply finds that the respondent has not testified credibly. The Court notes the glaring inconsistencies with regard to the respondent's testimony and the documentary evidence, as well as the internal inconsistencies, as well as respondent's own testimony with regard to inconsistencies between the law in China and the fact information that the respondent gave with regard to the marriage requirements during the course of these proceedings. At this point, the Court believes that this respondent has essentially not told the truth about much of anything. The Court queries as to when the respondent left China as the respondent does not have any type of passport and how long the respondent was in Peru or Guatemala. The Court, again, has no idea as to really when the respondent even entered the United States. The Court is inclined to believe that it could have been 2005. If it was 2005, namely April, then respondent's whole testimony regarding the abortion concerning his wife, that would have occurred on

October 25th of 2005, and his arrest that would have occurred on November 2, 2005, are completely and wholly incredible.

The respondent also was questioned about the fact that respondent's national ID card was issued by public security bureau officials three days after respondent allegedly escaped but was still in hiding. The Court notes that there were internal inconsistencies with regard to respondent's testimony concerning this matter. At one point the respondent testified that he obtained the ID card before he was detained. Then the respondent later testified that he applied for the card in advance and then the card apparently was later issued. But the Court still notes that the respondent failed to adequately explain how it is that, if he was in hiding, he would have obtained a national ID card issued on November 8, 2005. The respondent then finally, as a last stage effort, stated that his friend, (b) (6) was able to later help him obtain the document. It was apparent as respondent was testifying that respondent was making up this aspect of his testimony regarding his friend. The Court believes that the respondent fabricated testimony as it relates to the whole issuance of the ID card and the Court believes that the ID card truly shows that the respondent was not, on November 8, 2005, truly indicates to this court that the respondent was not in hiding. Hence, the Court believes that the respondent has not testified credibly even with regard to being detained by government authorities in

November of 2005.

In this case, the Court truly believes that this is a respondent who has fabricated all of his testimony with regard to his application for asylum. The Court believes that the respondent has fabricated testimony with regard to his marriage, the birth of his child, the alleged abortion that his wife underwent, the refusal of government authorities to allow him to marry in 1999, as well as his alleged detention in 2005, and the fact that government authorities are still looking for him. The Court simply does not believe anything that this respondent has testified to regarding his claim. In fact, the Court believes that his testimony was so egregious that the Court even allowed the respondent to have an opportunity to confer with counsel to see if the respondent would be willing to take pre-conclusion voluntary departure and the Court notes that respondent declined this opinion. But in this case, the Court does believe that this respondent has fabricated his testimony in a most egregious manner. The Court denies respondent's request for asylum. Inasmuch as the respondent has failed to meet the burden required for asylum, the Court finds that the respondent has failed to meet the more stringent burden required for withholding of removal and the Court denies respondent's request for withholding.

Respondent has applied for relief under Article 3 of the Torture Convention. Article 3 of the Torture Convention

prohibits the United States from removing an individual to a country in which it is more likely than not that individual would be subject to torture. The Court does not believe that the respondent has presented any testimony, even if credible, that would lead the Court to conclude that he was tortured in the past by Chinese government authorities for any reason and more importantly that he would face torture in the future if he were to return to the People's Republic of China. Hence, the Court denies respondent's request for relief under Article 3 of the Torture Convention.

ORDER

IT IS ORDERED that respondent's application for asylum be denied.

IT IS ORDERED that respondent's request for withholding of removal be denied.

IT IS ORDERED that respondent's request for relief under Article III of the United Nations Convention Against Torture be denied.

IT IS ORDERED that the respondent be removed from the United States to the People's Republic of China on the charge as set forth in the charging document.

(b) (6)
United States Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE

(b) (6) in the matter of:

(b) (6)

A (b) (6)

(b) (6)

is an accurate, verbatim transcript of the recording as provided by the Executive Office for Immigration Review and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

Carol M. Williams

CAROL M. WILLIAMS (Transcriber)

DEPOSITION SERVICES, Inc.

FEBRUARY 23, 2012

(Completion Date)

Immigration Judge Complaint Intake Form

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

Date Received at OCIJ: _____

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

	email: _____
	phone: _____
	fax: _____

complaint details		
IJ name	base city	ACIJ
(b) (6)		Thomas Y.K. Fong
relevant A-number(s)	date of incident	
(b) (6)	January 17, 2013	
allegations		
<p>The BIA referral memo states that pursuant to previous understanding that the Board would bring to the attention of the CIJ any decision where the BIA "remands a case to a different IJ." The BIA remand is a short half-page decision with no analysis and only concluding, "We find remand to a different IJ is warranted to conduct a de novo review of the record and to issues a new decision assessing the respondent's credibility." Signed by BM Anne Greer. However, there is a dissenting opinion from one of the three reviewing BM's stating, "Board Member Roger A. Pauley respectfully dissents and would affirm the IJ's decision due to many significant inconsistencies in the respondent's claim (I.J. at 14-20). While the IJ's further findings of "fabrication" may be speculative, such expressions do not denote bias or warrant remand, much less remand to a new IJ."</p>		
nature of complaint		

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

