



U.S. Department of Justice

Civil Division

Washington, D.C. 20530

Date: June 14, 2010

MEMORANDUM

To: Thomas W. Hussey, Director

From: Lisa M. Damiano, Trial Attorney

Cc: Terri Scadron, Assistant Director

Re: Trip Report, (b) (6) Cir.), A(b) (6)

On June 9, 2010, I appeared before the (b) (6) Circuit (b) (6) in the above-referenced case involving an alien from China who applied for asylum/withholding/CAT based upon persecution from the Chinese government on account of her "other resistance to population control policies" for refusing to take a pregnancy test and for assisting her cousin in evading family planning authorities. The IJ denied the applications based on an adverse credibility finding, as well as the alternative finding that the alleged events do not rise to the level of persecution. The Board affirmed the IJ's decision without addressing credibility, and held that the events do not rise to the level of persecution. The alien did not petition for review of that decision, but instead, filed a motion to reconsider the Board's merits decision arguing that the Board failed to properly address relevant facts in her case, or discuss whether her three-day detention combined with the fine paid by her family amounted to persecution. The Board denied alien's motion to reconsider, and the alien then petitioned for review of that decision.

At oral argument, all three judges asked questions of Petitioner's counsel, while only Judge (b) (6) and Judge (b) (6) questioned Respondent's counsel. The majority of the questions directed at Respondent's counsel came from Judge (b) (6)

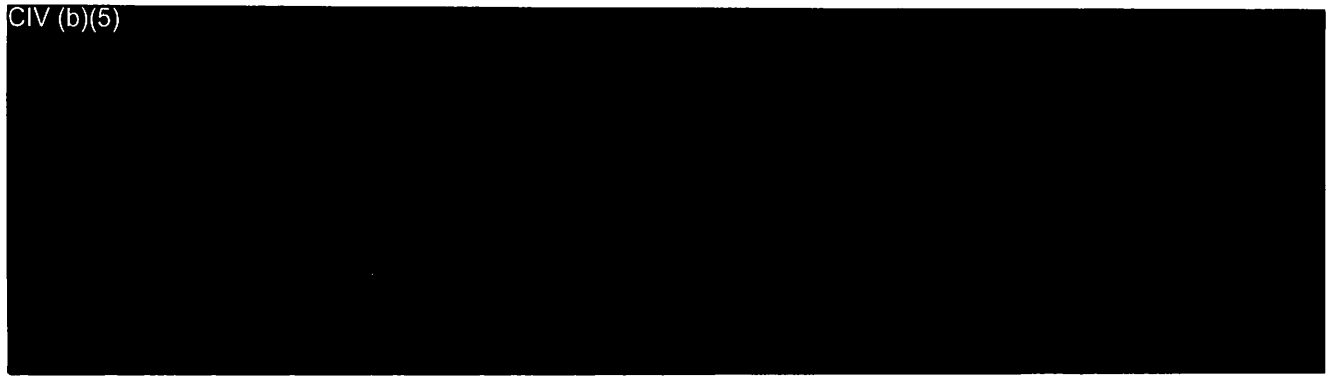
Petitioner's counsel began argument by stating that he represented the alien before the Board but not before the IJ. Judge (b) (6) immediately questioned Petitioner's counsel as to whether his brief even addressed the reasons the Board was required to reconsider the prior decision, and advised Petitioner's counsel that his opening brief reiterated his prior merits arguments only. Judge (b) (6) asked Petitioner's counsel what the Board "did wrong" and counsel replied that the Board's February 2009 decision did not "mention" "or consider" the three-day detention or fine, which he believes amounts to persecution in the aggregate. Judge (b) (6) asked Petitioner's counsel how he can make that argument when the September 2009 Board decision states that it "considered and addressed" all Petitioner's claims. In response, Petitioner's counsel stated that the February 2009 decision didn't list those facts, implying that the Board can't show they considered a fact if it's not mentioned in the prior decision. Judge (b) (6) questioned Petitioner's counsel about whether he ever argued to the Board that the

fine constituted persecution, and the Petitioner's counsel answered yes (although he did not ever specifically argue same). Judge (b) (6) asked Petitioner's counsel to show him in the record where he argued that point and counsel could not cite to the record but began listing his various arguments in his brief to the Board. Before he could finish, Judge (b) (6) postured that the February 2009 decision could have been "better," but questioned Petitioner's counsel as to whether that was enough to say the Board abused its discretion. Counsel answered affirmatively without providing reasons why that was the case, and then launched into an argument not contained in his brief. Namely, counsel argued that (b) (6)

(b) (6) and (b) (6) - cases Respondent cited to show that Petitioner's harm does not rise to the level of persecution - supported his position that the alien was persecuted. It seemed that Petitioner's counsel believed that his client's case was more severe than these two cases involving three-day detentions. Petitioner's counsel then argued that this is "the perfect case" demonstrating "other resistance" to China's population control policies, and claimed that Petitioner had three incidents of other resistance. Judge (b) (6) noted that there were two incidents and questioned counsel as to what the third incident was. Petitioner's counsel then claimed (1) that the alien's mother's purported forced sterilization and fine from years ago should be considered a third incident of "other resistance" imputed to alien; (2) that the Board hasn't properly explained what constitutes "other resistance" and should be required to do so; and, (3) that alien's pants were pulled down in front of "several officers" when she refused the pregnancy test and that she was "humiliated" as a result. Judge (b) (6) pointed out that the Board seems to find that alien's harm falls short of "other resistance." Petitioner's counsel was allowed to sum up, and he stated that the Board abused its discretion because it failed to consider the cumulative effect of the three-day detention, fine and other harms.

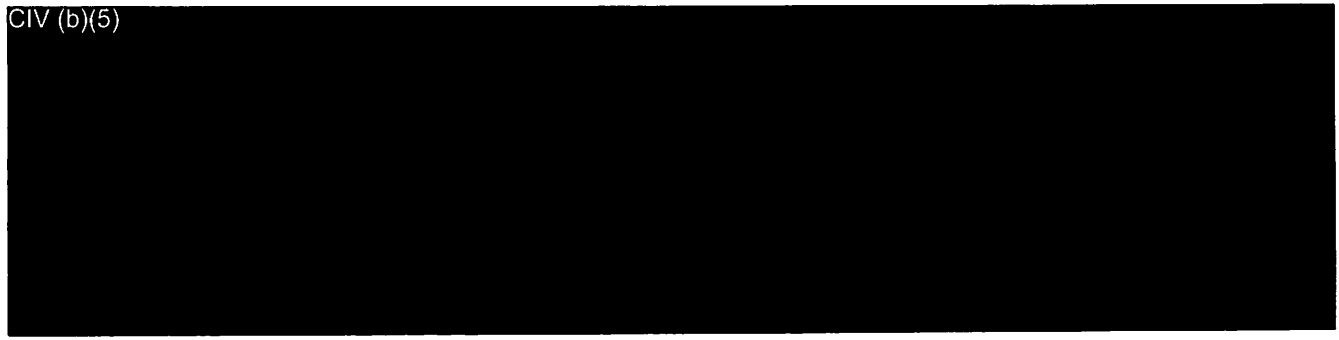
CIV (b)(5)

CIV (b)(5)



Petitioner's counsel reserved time for rebuttal but then declined to use it.

CIV (b)(5)



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

(b) (6)

File No.: A (b) (6)

March 27, 2006

In the Matter of

(b) (6)

Respondent

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)
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IN REMOVAL PROCEEDINGS

CHARGE: Section 237(a)(7)(A)(i)(I) of the Immigration and Nationality Act... An immigrant who is not in possession of a valid, unexpired, immigrant visa, reentry permit, border crossing identification card or other valid entry documents...

APPLICATIONS: Section 208 of the Immigration and Nationality Act, 8 U.S.C. Section 1158...

Asylum. Section 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. Section 1231(b)(3)...

Withholding of Removal. 8 C.F.R. Section 1208.16, withholding of removal under United Nations Convention Against Torture or other forms of cruel, inhuman or degrading treatment or punishment ("Torture Convention").

ON BEHALF OF RESPONDENT:

ON BEHALF OF DHS:

(b) (6)

(b) (6), (b) (7)(C)

ORAL DECISION OF THE IMMIGRATION JUDGE

I. Procedural History

Respondent is a native and citizen of China who entered the United States on or about August 9, 2003 at Miami, Florida

A (b) (6)

March 27, 2006

seeking admission to the United States as an arriving alien. On August 11, 2003, under the Department of Homeland Security, herein referred to DHS issued the charging document to wit, Notice to Appear on Form I-862 see Group Exhibit 1. The respondent appeared for an interview on a credible fear and as a result of that interview, a charging document was issued. See Group Exhibit 1, Form I-870 which was conducted on or about August 11, 2003. A Q&A was also included on Form I-870 see pages 6 and 7. We also have attached a Q&A sworn statement of proceedings conducted on August 9, 2003 at Miami International Airport consisting of six pages.

The respondent was released and paroled into the United States for her removal hearing see Form I-830 dated August 22, 2003. And we have the respondent's attorney's motion for change of venue see motion for change of venue received by the Court on August 27, 2003 at Miami, Florida in which the respondent admitted the factual allegations and conceded the charge of removability. The Court entered these documents into the record as part of Exhibit 2. Respondent had requested a continuance from time to time and I mentioned the case was heard today on March 27, 2006. The Court received in the record on January 24, 2004 the application for asylum which was entered into the record today on March 27, 2006 and the asylum application was tendered to the Court and properly preserved the respondent's request for asylum within the year of her entry into the United States. Once

again, see Exhibit 3. We have Exhibit 4, request from the State Department for their input. Exhibit 5 is the granting of the continuance of the respondent's request that the hearing for March 16, 2005 be reset for a future date. That was reset to March 22, 2006 at 1 p.m. see Exhibit 5. The case was again reset for a hearing today, March 27, 2006, see Exhibit 6. Respondent submitted to the Court and the Court had received some previously from the State Department, Exhibit 7, referring to the second response referring to the Country Report, the International Religious Report and the available profile. Respondent submitted to the Court as part of Group Exhibit 10 the submission a letter from (b) (6) envelope and from the above and also a certificate of translations as Exhibits 1 and 2. We also attach items 1 through 20 referring to the supporting documents of the respondent. We also have Country Reports submitted by the Government as Group Exhibit 11 and the World Book, Group Exhibit 12.

Respondent in her motion for change of venue admitted the factual actual allegations, conceded the charge of removability Based on the foregoing the Court finds removability has been established by evidence which is, clear, convincing and unequivocal. See I&N Section 240(c)(3)(A); 8 C.F.R. 1240.8(a); Cf. Woodby v. INS, 385 U.S. 276, 286 (1966). The respondent declined to designate a country of removal, therefore the Court has designated the country of removal as the People's Republic of

China, or China, in accordance to Section 241(b)(1)(C) of the Immigration and Nationality Act, herein referred to as the "Act".

Respondent has filed her application for asylum with the Court see Group Exhibit 3 on January 22, 2004 under Section 208 of the Immigration and Nationality Act, withholding of removal under Section 241(b)(3) of the Act and withholding of removal under the United Nations Convention Against Torture or other forms of cruel, inhuman or degrading treatment or punishment ("CAT"). The respondent was sworn to her application and the Court notes it has jurisdiction Section 8 C.F.R. 1208.2(b) of the Act.

II. Evidence Presented

The evidence presented at the Court were the documents submitted to the Court see Group Exhibit 3 with the attachments, Group Exhibit 10. The Court also has the documents previously referred to above, the charging document, the NTA, Exhibit 1, the Country Reports, Exhibit 11 and the World Book, Exhibit 12.

III. Testimony Presented

Respondent was the sole witness to testify in support for her application for relief. Respondent has testified her basically to the fact that she is now 22 years of age, according to the Chinese calendar, approaching her 23rd birthday on (b) (6) of this year and under the western calendar she will be 21 and approaching her 22nd birthday on (b) (6). Respondent has testified here further basically that she has two

older sisters and a younger brother and her parents are currently living in her home village where she lived on the island off of the mainland in Fujian Province. Respondent has testified here that she completed high school or attended high school. Respondent had testified further that she left school and worked as a waitress, that she had different jobs working in restaurants and on occasion she would leave the island and go to the mainland. She indicates here that when she was away from home she would live with others other than her parents and she would return back to her home when she was unemployed. Respondent has testified here that she, and the record reflects, that she attended a vocational school as well as elementary and junior high. The respondent has further testified that her father worked in the fishing industry, that he did not own any fishing boats but apparently he was like a middle man, obtaining the fish from the fishermen and would sell it to retail outlets. The respondent has testified here that the mother apparently had four children with her husband that they are now the age, the father in his mid 50's and the mother is in her 40's. That they still live at the same location that she was raised on the island. She indicated that her two older sisters are 20 and 19 respectively, and a younger brother who is 17-years-old as well. Respondent has indicated that her father did have helpers in the rural area and he would hire young men in their 20's to assist him in his work. Respondent has testified further that her father had two

sisters and a brother and that her mother had a brother and three sisters. Apparently the family planning requirements on the island were relaxed as we know that the Country Reports Indicate in the Fujian Province, the rural areas, the enforcement of the family planning is relaxed. Respondent has testified here that as a result of her mother having four children that apparently at her age when she was 11 or 12, she believes her mother had a sterilization. There's nothing in the record to verify that other than her own statements. And she indicated her mother was fined as well. Respondent has testified that she was 18-years-old and in the family planning, the women who are 18-years-old or older are required to have themselves checked for the pregnancy and the respondent had indicated here that at the time of her notification by the family planning that she was notified by letter and that a person came and handed her the requirements hand delivered by (b) (6) who was about 35 years of age. She indicated that her two older sisters had declined to respond favorably to a request for a pregnancy test and apparently she indicated nothing amiss occurred to them and as a result she also did not believe it was right for her to be examined under those circumstances. There's come question as to whether or not she was required to have a pregnancy test because apparently her own testimony here indicated that persons who were 18 or older were required to have this done and that the respondent apparently was not 18 at the time that they requested her to have the

examination. So there's some question whether or not, in fact, the respondent was, as she claims, required to have a pregnancy test and therefore it casts some doubt as to whether or not the respondent's testimony here, relative to that she was forced to be taken to the family planning facility and that she indicated that she refused to take a urine test and apparently she forcibly forced to have her pants removed and that she was to have given a specimen. The respondent had indicated that, in fact, after all was said and done, she never did give them a specimen and there's nothing in the record to reflect that any adverse factors occurred as a result. Apparently the respondent was later released and went home. Respondent has testified here that this occurred sometime around 1:30 p.m. in the early afternoon. Respondent has testified further that another incident occurred when her cousin, who had a child previously, who was four years of age, apparently had found herself pregnant and that as a result of this pregnancy the Court notes that she already had a son, and normally in rural areas, once you have a son you're not suppose to have another child according to the Country Reports, but if in case you have another child after five years you may subject to a fine. There are indications the Country Reports that abortions and sterilization is not resorted to in most cases. There are some exceptions, nevertheless, in the Country Reports that indicate that.

The respondent has testified that her cousin's husband was

out of town, apparently working, and that she was asked to care for her during her pregnancy.

She indicates that as a result of being phoned by the family planning, the cousin had indicated that she did not feel well and did not respond. The respondent has testified here sometime in May of 2003 at 10:30 a.m., in the morning, four or five individuals, one whom was a female came to her cousin's house. She indicated that she allegedly place a chair against the door to prevent the family planning members to enter the home. She indicated that her cousin went to the bathroom to hide and that apparently family planning kicked down the door and entered the house of the cousin. The respondent testified that they searched the house. She admits that she told the family planning when they were knocking on the door that her cousin was not at home and that when the family planning entered they saw a window opened and they assumed that the cousin fled through the window. The respondent has testified here that the cousin had not been found by the family planning officials. She alleges that she was taken into custody and taken to the family planning facility where she was detained. She indicates that she was locked up, that they gave her no food and no and they accused her of assisting her cousin in running away and escaping from the family planning. Respondent subsequently had admitted that she received some porridge, after questioning by the Government and apparently she got sick as a result of the porridge. She claims that she

was detained for three days and at first said that she was fed nothing and then she admitted that she fed porridge at least once a day. She indicated as a result of this she was, she got sick to the stomach and she vomited and had diarrhea. The respondent indicated that as a result she was taken to a facility in which she was treated and eventually the family planning accepted a fine of 5,000 yuan and that she was released after three days. She was arrested on May 2, 2003 and apparently she indicates she was released on May 6, 2003. She had indicated that after attending the hospital with a doctor she was released. Apparently an x-ray was taken and she was diagnosed with gastritis, apparently a stomach problem.

Respondent indicated here that as a result of being released, the family had decided that the respondent should flee the country, that the respondent had testified here that she had obtained a valid travel document from the Chinese authorities, that she made an application and signed the application and signed the passport, submitted the photographs. She indicated that no fee was required for the passport. She further indicated that she was not aware of exit fee required when she left China via China Airlines and leaving the Chines Airport at Xiamien. Respondent had indicated that there was no problems for her when she went through passport control, but she apparently had with her approximately 4,000 RMB. She indicated previously that she had \$4,000 dollars, she indicated there may have been an

understanding. Respondent testified that she traveled to Thailand and remained there for one month, that she did not make an application for asylum. She indicated that she left Thailand, apparently claiming that she used a Japanese passport, according to a statement given at the Q&A at the airport. And she indicated here that the Chinese passport that she had, she gave to a friend who mailed back the passport to her parents in mainland China and she indicated that the parents, in fact, received the passport. Later on the respondent testified here that she believes that, we note now for the first time, that she indicates that a snakehead was involved and she believes the snakehead obtained the passport for her parents in China. The Court notes that this is pure speculation, if, in fact, that the Chinese passport was returned to the parents, there would be no likelihood that the parents would give the passport over to anyone else. And there's some questions whether or not, in fact, there was a snakehead involved in these proceedings. But be as it may, we do note that there are travel agents in all countries and that this may have been a travel agency securities route for the respondent to enter the United States. She traveled, she indicates, to India remained two weeks, traveled to Turkey, remained two weeks and went on to Curacao and remained there for two weeks before going onto the United States at Miami, Florida. She indicated that it cost her relatives approximately \$5,000 for her to travel from China to the United States during this

security route. Respondent has testified here, basically, of two instances that she asserts that she describes her resistance to family planning. One, that she refused to take a pregnancy test prior to her 18th birthday and two, that she assisted her cousin in avoiding family planning detention. These are the two instances that she claims arise to the level of past persecution. The Government's attorney had question the respondent relative to any political activities, such as being a member of Falun Gong or any political organizations. And the respondent has indicated that she was not politically active that further responded when questioned by the Government that she was never forced to have a sterilization, never had an abortion, never had an IUD inserted, that she was never married, that she was always single and remained single to the present time. Respondent claims that she was mistreated when detained by the authorities for three days. That she was not fed, but yet, she did admit when questioned by the Government attorney that she was given porridge once a day and that the gastritis was a result of the incident in question. Respondent also admitted that the respondent's cousin has relocated in China, living in another area and has not been detected by the Chinese authorities and that apparently nothing has happened to her or her family in China.

And the Government believes that the respondent has not shown that she could not relocate within China as a result of her asserted fears, herein. She indicates that the Country Reports

has indicated that the family planning enforcement in rural areas are not strictly enforced and the respondent's parents apparently have not been adversely affected by the respondent's departure.

The Court notes when the respondent was questioned by Court initially she indicates she had no relatives in the United States. She did admit in interview at the airport that she had her mother's aunt was in the United States, her name being (b) (6) (b) (6) and that she gave the telephone number of the aunt on her mother's side. The respondent has denied that she is, in fact, a blood relative of the respondent, but apparently these contradictions occurred. The respondent had testified also as to the passport that she paid 10,000 Chinese dollars for the Japanese passport. Respondent has asserted here, among other fears, that she fears that if she were to return to China that she would be punished, but yet the respondent had left with a valid passport, there's no indication here that the Chinese Government would, in fact, punish the respondent as she asserts. That the passport was supposedly in the possession of her parents and there is some questions as to whether or not the parents still retain the passport. The Court notes that passports, on occasion are, in fact, lost and replacement passports are available as long as there was a valid issuance of the passport here, there's no showing that this respondent could not retain a replacement passport as well.

Respondent fears that if she returns to China that should be

detained by the family planning authorities, yet the government of China had no reason to detain her if she returns back with her valid Chinese passport. There is no reason why the family planning would, in fact, detain her as she asserts here in view of the fact that it is more than two years since she left the country. That she has never been married, she has never been pregnant, she has never been otherwise bothered by the Chinese family planning. The respondent's assertion here that the incident when she was 17, not yet 18 years of age, that she allegedly refused to have a urine test taken to determine whether or not she was, in fact, pregnant, the Court does not believe that rises to the level of past persecution, nor the incidences in which the respondent asserts that she was detained for three days because of a cousins alleged pregnancy, does not rise to the level of past persecution as well. The Court notes there is nothing in the record to verify or to establish that the cousin was, in fact, pregnant. Apparently the Chinese authorities, the family planning agency in her community does not know the results of whether or not her cousin was, in fact, pregnant or not. Therefore, there is no reliance that the family planning would, in fact, seek the respondent out.

Therefore, the Court does not find that the respondent has established her eligibility for asylum under these circumstances, in view of the fact that there is no past persecution. The Court does not believe then under these circumstances the respondent

has met her burden of proof to establish future persecution as well.

Asylum

Under Section 298(a) the Attorney General may grant asylum to an alien who is physically present in the United States and if the alien meets the statutory definition of a refugee. A refugee is defined as an individual who is unable or unwilling to return to his or her native country because of "persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group or political opinion." See Section 101(a)(42)(A) of the Act. In order to establish eligibility for asylum the respondent carries the burden of establishing past persecution or a well-founded fear of future persecution. See Section 101(a)(42)(A) of the Act; Matter of Chen, 20 I&N Dec. 16, 17 (BIA 1989); Matter of Acosta, 19 I&N Dec. 211, 215 (BIA 1985). The statute provides no definition of the phrase "well-founded fear of persecution". However, the Courts have indicated that a respondent can establish a well-founded fear by showing that a reasonable person in his or her circumstances would fear persecution on one or more of the five grounds specified in the Act.

Credibility

The Court attaches significant weight to the credibility of an asylum applicant. See In re O-D-, 21 I&N Dec. 1079 (BIA 1998). An applicant's (indiscernible) is consistent and detailed

testimony can be sufficient to meet the burden of establishing persecution. In re Kasinga, I&N Dec. 537 (BIA 1996); Matter of Mogharrabi, 19 I&N Dec. 439, 445 (BIA 1987). However, "an applicant does not meet his or her burden of proof by general and meager testimony." In re Y-B-, 21 I&N Dec. 1136 (BIA 1998), and the unavailability of supporting documentary evidence should be adequately explained. See Matter S-M-J-, 21 I&N Dec 722, 730 (BIA 1997). Moreover, the Immigration Judge may make an adverse credibility finding in denying the applicant's application for asylum and withholding of deportation when 1. there are discrepancies present in the respondent's documentary and testimony evidence; 2. those inconsistencies and omission provide good reason to conclude that the respondent's testimony isn't credible; and 3. the respondent failed to provide convincing explanation for those discrepancies. See Matter S-A-, 22 I&N Dec. 1328, 1331 (BIA 2002) (citing Matter A-S-, 21 I&N Dec. 1106, 1109 (BIA 1998)).

Even if the respondent is found credible, this finding alone is not dispositive as to whether asylum should be granted. Rather the specific contents of the testimony and any other relevant evidence in the record is also considered. In re E-P-, 21 I&N Dec. 860, 862 (BIA 1997). After reviewing the record in it's entirety, the Court find the respondent's claim to be unconvincing and not credible. The respondent based her asylum application on the fact that she was required to take a urine

test before her 18th birthday. She indicated that 18 is a required age for all young ladies in the community. The community require a urine test or a pregnancy test. The respondent here has testified here the record has reflected and even her attorney has indicated that she was still 17, was not 18 at the time of the request. The respondent has indicated here as well that she may have only been 16-years-old at the time of the alleged requirements for her to come for her pregnancy test. Apart from the respondent's own self-serving statements there is nothing in the record here to verify that, in fact, that this gentleman came to her apartment or to her home with the pregnancy requirement by the family planning agency. The respondent has further testified here that all ladies at 18 are required to have a pregnancy test as well. The Court notes that the respondent has testified here that her two sisters, 20 and 19 years of age were required to have a pregnancy test as well, but did not do so and apparently no adverse affect occurred to them nor is the respondent aware of any adverse affect to her sisters.

Therefore, the Court finds under these circumstances it is incredible that the respondent would, in fact, be required to take a pregnancy test prior to her 18th birthday, that her assertion that her pants were pulled down for her to have a urine test and then, in fact, she was unable to give a urine test, apparently she had not sufficient bladder to give a test also undercuts her claim her. Further the Court finds that the

assertions here that she was detained by the family planning because of a cousin who was pregnant and was required to appear for a pregnancy test while she was pregnant after having a child, a son who was born and was four years of age, also is not persuasive here. The cousin has indicated here as well that she, in fact gave birth to a child, apparently at an unknown location outside of where the respondent's cousin normally lived and apparently is living in an area other than where she normally did and that apparently it was undetected and apparently is prospering. There is nothing in the record to show here that that cousin was in fact pregnant by the family planning. There is nothing in the record to show that the family planning had any basis to detain the respondent upon her return, if, in fact, the family planning had never found the cousin and has never verified that the cousin was, in fact, pregnant. It is speculation here. And the Court does not find under these circumstances the respondent a viable fear of persecution by the family planning program. She was never pregnant, she was never sterilized, she has never received an abortion, she has never had an IUD inserted, she was never married. There is no reason for the family planning would do so as well. And as Government has asserted in the Country Reports, the Fujian Province the policy is generally a one child policy, however, in some southern, urban areas, if the parent's first child is a female, they may apply for a set number of years, usually four, to conceive a second

child in the hope that it will be a male. Fujian Province's lax enforcement of family planning rules has been criticized in the official press.

And apparently there is a lax enforcement in the area that the respondent resides in. The Court further notes that the respondent's testimony is unconvincing, she has advised the Court that she had a Chinese passport when she left China. She asserts here that she traveled on with a Japanese passport. There's nothing to verify that she, in fact, traveled with a Japanese passport. She indicated the passport was destroyed before she landed in Miami. There is nothing to show that, in fact, that the respondent had been able to travel on her Chinese passport. Her assertions that the Chinese passport was returned home is also questionable and the question that in fact, that the respondent has testified now that that Chinese passport was given over to the alleged snakehead also seems to be questionable and not convincing. The fact that respondent has testified here that she had no family in the United States and her statement at the airport indicated that she had an aunt from her mother's side, also undercuts her veracity as well here. The respondent has testified here that she made securitis trip from China to Thailand, from Thailand to India to India to Turkey from Turkey to Curacao from Curacao to Miami and this may well be a route that the respondent had taken through a normal course, there is nothing to show here that the respondent could not return back to

China under these circumstances. Because of those inconsistencies the fact that her statements here are not contradictory in part does not convince the Court that the respondent's fear is well-taken.

Burden of Proof

Respondent's testimony is not credible, therefore her testimony alone is not sufficient to meet her burden of proof. 8 C.F.R. 1208.13(a). Other than the testimony, the Court looks at the corroborating evidence submitted by the respondent here. The fact that she obtained an x-ray showing that she had gastritis does not verify that this was done as a result of a detention. There is nothing here to verify that she was, in fact, detained. That this may have been a document obtained in the normal course. The respondent's fears of returning to China is not convincing and most damaging is the fact that her cousin has indicated here that she had a child and it was born outside of the island, apparently the cousin is living the county. Whether or not we know that that is in fact the case, or whether or not the cousin wrote that in support of the respondent's application here is still problematical. But assuming that to be genuine, the Court finds under these circumstances that there's no showing that the respondent herself could relocate in China and the Court notes the Country Reports there indicate there is a mass migration of people from the provinces to cities as well. And that this would bode well under those circumstances. The Court does not find her

testimony under these circumstances credible. But arguendo if I were to find her testimony to be credible and if the events, in fact, took place, the Court does not believe that any of them arise to the level of past persecution and therefore the Court finds that she has not established future persecution under these circumstances and for those reasons the Court would deny her request for asylum for failure of establishing her burden of proof in the above requirements as well, credible evidence to establish those facts.

Withholding of Removal

Respondent has requested withholding of removal under Section 241(b)(3). To be eligible for withholding of removal pursuant to Section 241(b)(3) of the Act, the applicant must demonstrate a clear probability of persecution from the country designated for removal on account of race, religion, nationality, membership in a particular social group or political opinion. See INS v. Stevic, 467 U.S. 407 (1984); Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987). An applicant must also establish that it is more likely than not that he or she would be subject to persecution for one or more of the enumerated grounds.

Because the respondent's failed to meet the well-founded fear standard required for asylum, she has necessarily failed to meet the more stringent required for clear probability of persecution required for withholding of removal. Accordingly, the respondent's application for withholding of removal will also

be denied.

Torture Convention

For asylum applicants who file on or after April 1, 1997 an applicant shall be considered for eligibility for withholding of removal under the United Nations Convention Against Torture or other cruel or inhuman or degrading treatment or punishment ("Torture Convention") if the applicant requests such consideration or if the evidence presented by the alien in the case that an alien may be tortured in the country of removal. See 8 C.F.R. 1208.13(c)(1). An applicant for withholding of removal under torture convention bears a burden of proving that it is "more likely than not" that he or she would be tortured if removed to proposed country of removal. 8 C.F.R. 1208.16(c)(2). As with asylum, this burden can be established by testimony without corroboration if the testimony is credible. See also Matter of Y-B-, 21 I&N Dec. 1136 (BIA 1998). In Matter of Acosta, 19 I&N Dec. 211 (BIA 1985). In assessing whether the applicant has satisfied the burden of proof, the Court must consider all evidence relevant to the possibility of future torture, including "evidence of past torture inflicted upon the applicant; evidence the applicants could relocate to a part of the country of removal where he or she is not likely to be tortured; evidence of gross, flagrant or mass violation of human rights within the country of removal, where applicable; and other relevant information regarding conditions in the country of

removal." 8 C.F.R. 1208.16(c)(3).

"Torture" is defined as "any act by which severe pain or suffering whether physical or mental is intentionally inflicted on a person." 8 C.F.R. 1208.18(a)(1). This severe or suffering must be inflicted on the applicant or on a third person for one of four purposes specified: 1. to obtain information or confession; 2. to punish for an act he or she committed or is suspected of having committed; 3. to intimidate or coerce; or 4. for any reason based on discrimination of any kind. In addition, in order to constitute "torture" the "act must be directed against a person in the offender's custody or physical control." 8 C.F.R. 1208.18(a)(6). Further, the pain or suffering must be inflicted "by or at the instigation of or with the consent or acquiescence of a public official or other persons acting in an official capacity." 8 C.F.R. 1208.18(a)(1). "Acquiescence" requires that the public official have prior awareness of the activities and "thereafter breach his or her legal responsibility to intervene to prevent such activity". 8 C.F.R. 1208.18(a)(7). Torture is an "extreme form of cruel, inhuman treatment" but does not include pain or suffering arising from lawful sanction. 8 C.F.R. 1208.18(a)(2), (3). Lawful sanctions, however, do not include sanctions which defeat the objectives and purposes of Torture Convention. 8 C.F.R. 1208.18(a)(3).

As discussed above, the respondent has failed to establish that she has a well-founded fear of persecution if removed to

China. Specifically, respondent has failed to present any credible evidence that she was tortured in the past or that the Chinese Government would acquiesce to her torture if she was returned to China. In short, the respondent has failed to establish that it is more likely than not that she will be tortured if removed to China. As such, respondent's request for withholding of removal under Torture Convention must be denied.

Accordingly, the following orders are entered.

ORDER

IT IS HEREBY ORDERED that respondent's application for asylum, withholding of removal under the Act and withholding of removal under the Torture Convention are denied.

IT IS FURTHER ORDERED that respondent be removed as charged in the Notice to Appear be removed to the People's Republic of China.

(b) (6)
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 cassette tape 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.


Staci Childers, Transcriber

Free State Reporting, Inc.
1378 Cape St. Claire Road
Annapolis, Maryland 21401
(301) 261-1902

November 2, 2006
(completion date)

By submission of this CERTIFICATE PAGE, the Contractor certifies that a Sony BEC/T-147, 4-channel transcriber or equivalent, as described in Section C, paragraph C.3.3.2 of the contract, was used to transcribe the Record of Proceeding shown in the above paragraph.

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

(b) (6)

File No.: A (b) (6)

March 27, 2006

In the Matter of)

(b) (6))

IN REMOVAL PROCEEDINGS

Respondent)

CHARGE:

Section 237(a) (7) (A) (i) (I) of the Immigration and Nationality Act... An immigrant who is not in possession of a valid, unexpired, immigrant visa, reentry permit, border crossing identification card or other valid entry documents...

APPLICATIONS:

Section 208 of the Immigration and Nationality Act, 8 U.S.C. Section 1158...

Asylum. Section 241(b) (3) of the Immigration and Nationality Act, 8 U.S.C. Section 1231(b) (3)...

Withholding of Removal. 8 C.F.R. Section 1208.16, withholding of removal under United Nations Convention Against Torture or other forms of cruel, inhuman or degrading treatment or punishment ("Torture Convention").

ON BEHALF OF RESPONDENT:

ON BEHALF OF DHS:

(b) (6)

(b) (6), (b) (7)(C)

ORAL DECISION OF THE IMMIGRATION JUDGE

I. Procedural History

Respondent is a native and citizen of China who entered the United States on or about August 9, 2003 at Miami, Florida

A (b) (6)

March 27, 2006

seeking admission to the United States as an arriving alien. On August 11, 2003, under the Department of Homeland Security, herein referred to DHS issued the charging document to wit, Notice to Appear on Form I-862 see Group Exhibit 1. The respondent appeared for an interview on a credible fear and as a result of that interview, a charging document was issued. See Group Exhibit 1, Form I-870 which was conducted on or about August 11, 2003. A Q&A was also included on Form I-870 see pages 6 and 7. We also have attached a Q&A sworn statement of proceedings conducted on August 9, 2003 at Miami International Airport consisting of six pages.

The respondent was released and paroled into the United States for her removal hearing see Form I-830 dated August 22, 2003. And we have the respondent's attorney's motion for change of venue see motion for change of venue received by the Court on August 27, 2003 at Miami, Florida in which the respondent admitted the factual allegations and conceded the charge of removability. The Court entered these documents into the record as part of Exhibit 2. Respondent had requested a continuance from time to time and I mentioned the case was heard today on March 27, 2006. The Court received in the record on January 24, 2004 the application for asylum which was entered into the record today on March 27, 2006 and the asylum application was tendered to the Court and properly preserved the respondent's request for asylum within the year of her entry into the United States. Once

again, see Exhibit 3. We have Exhibit 4, request from the State Department for their input. Exhibit 5 is the granting of the continuance of the respondent's request that the hearing for March 16, 2005 be reset for a future date. That was reset to March 22, 2006 at 1 p.m. see Exhibit 5. The case was again reset for a hearing today, March 27, 2006, see Exhibit 6. Respondent submitted to the Court and the Court had received some previously from the State Department, Exhibit 7, referring to the second response referring to the Country Report, the International Religious Report and the available profile. Respondent submitted to the Court as part of Group Exhibit 10 the submission a letter from (b) (6) envelope and from the above and also a certificate of translations as Exhibits 1 and 2. We also attach items 1 through 20 referring to the supporting documents of the respondent. We also have Country Reports submitted by the Government as Group Exhibit 11 and the World Book, Group Exhibit 12.

Respondent in her motion for change of venue admitted the factual actual allegations, conceded the charge of removability Based on the foregoing the Court finds removability has been established by evidence which is, clear, convincing and unequivocal. See I&N Section 240(c)(3)(A); 8 C.F.R. 1240.8(a); Cf. Woodby v. INS, 385 U.S. 276, 286 (1966). The respondent declined to designate a country of removal, therefore the Court has designated the country of removal as the People's Republic of

China, or China, in accordance to Section 241(b)(1)(C) of the Immigration and Nationality Act, herein referred to as the "Act".

Respondent has filed her application for asylum with the Court see Group Exhibit 3 on January 22, 2004 under Section 208 of the Immigration and Nationality Act, withholding of removal under Section 241(b)(3) of the Act and withholding of removal under the United Nations Convention Against Torture or other forms of cruel, inhuman or degrading treatment or punishment ("CAT"). The respondent was sworn to her application and the Court notes it has jurisdiction Section 8 C.F.R. 1208.2(b) of the Act.

II. Evidence Presented

The evidence presented at the Court were the documents submitted to the Court see Group Exhibit 3 with the attachments, Group Exhibit 10. The Court also has the documents previously referred to above, the charging document, the NTA, Exhibit 1, the Country Reports, Exhibit 11 and the World Book, Exhibit 12.

III. Testimony Presented

Respondent was the sole witness to testify in support for her application for relief. Respondent has testified her basically to the fact that she is now 22 years of age, according to the Chinese calendar, approaching her 23rd birthday on (b)(6) of this year and under the western calendar she will be 21 and approaching her 22nd birthday on (b)(6). Respondent has testified here further basically that she has two

older sisters and a younger brother and her parents are currently living in her home village where she lived on the island off of the mainland in Fujian Province. Respondent has testified here that she completed high school or attended high school. Respondent had testified further that she left school and worked as a waitress, that she had different jobs working in restaurants and on occasion she would leave the island and go to the mainland. She indicates here that when she was away from home she would live with others other than her parents and she would return back to her home when she was unemployed. Respondent has testified here that she, and the record reflects, that she attended a vocational school as well as elementary and junior high. The respondent has further testified that her father worked in the fishing industry, that he did not own any fishing boats but apparently he was like a middle man, obtaining the fish from the fishermen and would sell it to retail outlets. The respondent has testified here that the mother apparently had four children with her husband that they are now the age, the father in his mid 50's and the mother is in her 40's. That they still live at the same location that she was raised on the island. She indicated that her two older sisters are 20 and 19 respectively, and a younger brother who is 17-years-old as well. Respondent has indicated that her father did have helpers in the rural area and he would hire young men in their 20's to assist him in his work. Respondent has testified further that her father had two

sisters and a brother and that her mother had a brother and three sisters. Apparently the family planning requirements on the island were relaxed as we know that the Country Reports Indicate in the Fujian Province, the rural areas, the enforcement of the family planning is relaxed. Respondent has testified here that as a result of her mother having four children that apparently at her age when she was 11 or 12, she believes her mother had a sterilization. There's nothing in the record to verify that other than her own statements. And she indicated her mother was fined as well. Respondent has testified that she was 18-years-old and in the family planning, the women who are 18-years-old or older are required to have themselves checked for the pregnancy and the respondent had indicated here that at the time of her notification by the family planning that she was notified by letter and that a person came and handed her the requirements hand delivered by (b) (6) who was about 35 years of age. She indicated that her two older sisters had declined to respond favorably to a request for a pregnancy test and apparently she indicated nothing amiss occurred to them and as a result she also did not believe it was right for her to be examined under those circumstances. There's come question as to whether or not she was required to have a pregnancy test because apparently her own testimony here indicated that persons who were 18 or older were required to have this done and that the respondent apparently was not 18 at the time that they requested her to have the

examination. So there's some question whether or not, in fact, the respondent was, as she claims, required to have a pregnancy test and therefore it casts some doubt as to whether or not the respondent's testimony here, relative to that she was forced to be taken to the family planning facility and that she indicated that she refused to take a urine test and apparently she forcibly forced to have her pants removed and that she was to have given a specimen. The respondent had indicated that, in fact, after all was said and done, she never did give them a specimen and there's nothing in the record to reflect that any adverse factors occurred as a result. Apparently the respondent was later released and went home. Respondent has testified here that this occurred sometime around 1:30 p.m. in the early afternoon. Respondent has testified further that another incident occurred when her cousin, who had a child previously, who was four years of age, apparently had found herself pregnant and that as a result of this pregnancy the Court notes that she already had a son, and normally in rural areas, once you have a son you're not suppose to have another child according to the Country Reports, but if in case you have another child after five years you may subject to a fine. There are indications the Country Reports that abortions and sterilization is not resorted to in most cases. There are some exceptions, nevertheless, in the Country Reports that indicate that.

The respondent has testified that her cousin's husband was

out of town, apparently working, and that she was asked to care for her during her pregnancy.

She indicates that as a result of being phoned by the family planning, the cousin had indicated that she did not feel well and did not respond. The respondent has testified here sometime in May of 2003 at 10:30 a.m., in the morning, four or five individuals, one whom was a female came to her cousin's house. She indicated that she allegedly place a chair against the door to prevent the family planning members to enter the home. She indicated that her cousin went to the bathroom to hide and that apparently family planning kicked down the door and entered the house of the cousin. The respondent testified that they searched the house. She admits that she told the family planning when they were knocking on the door that her cousin was not at home and that when the family planning entered they saw a window opened and they assumed that the cousin fled through the window. The respondent has testified here that the cousin had not been found by the family planning officials. She alleges that she was taken into custody and taken to the family planning facility where she was detained. She indicates that she was locked up, that they gave her no food and no and they accused her of assisting her cousin in running away and escaping from the family planning. Respondent subsequently had admitted that she received some porridge, after questioning by the Government and apparently she got sick as a result of the porridge. She claims that she

was detained for three days and at first said that she was fed nothing and then she admitted that she fed porridge at least once a day. She indicated as a result of this she was, she got sick to the stomach and she vomited and had diarrhea. The respondent indicated that as a result she was taken to a facility in which she was treated and eventually the family planning accepted a fine of 5,000 yuan and that she was released after three days. She was arrested on May 2, 2003 and apparently she indicates she was released on May 6, 2003. She had indicated that after attending the hospital with a doctor she was released. Apparently an x-ray was taken and she was diagnosed with gastritis, apparently a stomach problem.

Respondent indicated here that as a result of being released, the family had decided that the respondent should flee the country, that the respondent had testified here that she had obtained a valid travel document from the Chinese authorities, that she made an application and signed the application and signed the passport, submitted the photographs. She indicated that no fee was required for the passport. She further indicated that she was not aware of exit fee required when she left China via China Airlines and leaving the Chines Airport at Xiamien. Respondent had indicated that there was no problems for her when she went through passport control, but she apparently had with her approximately 4,000 RMB. She indicated previously that she had \$4,000 dollars, she indicated there may have been an

understanding. Respondent testified that she traveled to Thailand and remained there for one month, that she did not make an application for asylum. She indicated that she left Thailand, apparently claiming that she used a Japanese passport, according to a statement given at the Q&A at the airport. And she indicated here that the Chinese passport that she had, she gave to a friend who mailed back the passport to her parents in mainland China and she indicated that the parents, in fact, received the passport. Later on the respondent testified here that she believes that, we note now for the first time, that she indicates that a snakehead was involved and she believes the snakehead obtained the passport for her parents in China. The Court notes that this is pure speculation, if, in fact, that the Chinese passport was returned to the parents, there would be no likelihood that the parents would give the passport over to anyone else. And there's some questions whether or not, in fact, there was a snakehead involved in these proceedings. But be as it may, we do note that there are travel agents in all countries and that this may have been a travel agency securities route for the respondent to enter the United States. She traveled, she indicates, to India remained two weeks, traveled to Turkey, remained two weeks and went on to Curacao and remained there for two weeks before going onto the United States at Miami, Florida. She indicated that it cost her relatives approximately \$5,000 for her to travel from China to the United States during this

security route. Respondent has testified here, basically, of two instances that she asserts that she describes her resistance to family planning. One, that she refused to take a pregnancy test prior to her 18th birthday and two, that she assisted her cousin in avoiding family planning detention. These are the two instances that she claims arise to the level of past persecution. The Government's attorney had question the respondent relative to any political activities, such as being a member of Falun Gong or any political organizations. And the respondent has indicated that she was not politically active that further responded when questioned by the Government that she was never forced to have a sterilization, never had an abortion, never had an IUD inserted, that she was never married, that she was always single and remained single to the present time. Respondent claims that she was mistreated when detained by the authorities for three days. That she was not fed, but yet, she did admit when questioned by the Government attorney that she was given porridge once a day and that the gastritis was a result of the incident in question. Respondent also admitted that the respondent's cousin has relocated in China, living in another area and has not been detected by the Chinese authorities and that apparently nothing has happened to her or her family in China.

And the Government believes that the respondent has not shown that she could not relocate within China as a result of her asserted fears, herein. She indicates that the Country Reports

has indicated that the family planning enforcement in rural areas are not strictly enforced and the respondent's parents apparently have not been adversely affected by the respondent's departure.

The Court notes when the respondent was questioned by Court initially she indicates she had no relatives in the United States. She did admit in interview at the airport that she had her mother's aunt was in the United States, her name being (b) (6) (b) (6) and that she gave the telephone number of the aunt on her mother's side. The respondent has denied that she is, in fact, a blood relative of the respondent, but apparently these contradictions occurred. The respondent had testified also as to the passport that she paid 10,000 Chinese dollars for the Japanese passport. Respondent has asserted here, among other fears, that she fears that if she were to return to China that she would be punished, but yet the respondent had left with a valid passport, there's no indication here that the Chinese Government would, in fact, punish the respondent as she asserts. That the passport was supposedly in the possession of her parents and there is some questions as to whether or not the parents still retain the passport. The Court notes that passports, on occasion are, in fact, lost and replacement passports are available as long as there was a valid issuance of the passport here, there's no showing that this respondent could not retain a replacement passport as well.

Respondent fears that if she returns to China that should be

detained by the family planning authorities, yet the government of China had no reason to detain her if she returns back with her valid Chinese passport. There is no reason why the family planning would, in fact, detain her as she asserts here in view of the fact that it is more than two years since she left the country. That she has never been married, she has never been pregnant, she has never been otherwise bothered by the Chinese family planning. The respondent's assertion here that the incident when she was 17, not yet 18 years of age, that she allegedly refused to have a urine test taken to determine whether or not she was, in fact, pregnant, the Court does not believe that rises to the level of past persecution, nor the incidences in which the respondent asserts that she was detained for three days because of a cousin's alleged pregnancy, does not rise to the level of past persecution as well. The Court notes there is nothing in the record to verify or to establish that the cousin was, in fact, pregnant. Apparently the Chinese authorities, the family planning agency in her community does not know the results of whether or not her cousin was, in fact, pregnant or not. Therefore, there is no reliance that the family planning would, in fact, seek the respondent out.

Therefore, the Court does not find that the respondent has established her eligibility for asylum under these circumstances, in view of the fact that there is no past persecution. The Court does not believe then under these circumstances the respondent

has met her burden of proof to establish future persecution as well.

Asylum

Under Section 298(a) the Attorney General may grant asylum to an alien who is physically present in the United States and if the alien meets the statutory definition of a refugee. A refugee is defined as an individual who is unable or unwilling to return to his or her native country because of "persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group or political opinion." See Section 101(a)(42)(A) of the Act. In order to establish eligibility for asylum the respondent carries the burden of establishing past persecution or a well-founded fear of future persecution. See Section 101(a)(42)(A) of the Act; Matter of Chen, 20 I&N Dec. 16, 17 (BIA 1989); Matter of Acosta, 19 I&N Dec. 211, 215 (BIA 1985). The statute provides no definition of the phrase "well-founded fear of persecution". However, the Courts have indicated that a respondent can establish a well-founded fear by showing that a reasonable person in his or her circumstances would fear persecution on one or more of the five grounds specified in the Act.

Credibility

The Court attaches significant weight to the credibility of an asylum applicant. See In re O-D-, 21 I&N Dec. 1079 (BIA 1998). An applicant's (indiscernible) is consistent and detailed

testimony can be sufficient to meet the burden of establishing persecution. In re Kasinga, I&N Dec. 537 (BIA 1996); Matter of Mogharrabi, 19 I&N Dec. 439, 445 (BIA 1987). However, "an applicant does not meet his or her burden of proof by general and meager testimony." In re Y-B-, 21 I&N Dec. 1136 (BIA 1998), and the unavailability of supporting documentary evidence should be adequately explained. See Matter S-M-J-, 211 I&N Dec 722, 730 (BIA 1997). Moreover, the Immigration Judge may make an adverse credibility finding in denying the applicant's application for asylum and withholding of deportation when 1. there are discrepancies present in the respondent's documentary and testimony evidence; 2. those inconsistencies and omission provide good reason to conclude that the respondent's testimony isn't credible; and 3. the respondent failed to provide convincing explanation for those discrepancies. See Matter S-A-, 22 I&N Dec. 1328, 1331 (BIA 2002) (citing Matter A-S-, 21 I&N Dec. 1106, 1109 (BIA 1998)).

Even if the respondent is found credible, this finding alone is not dispositive as to whether asylum should be granted. Rather the specific contents of the testimony and any other relevant evidence in the record is also considered. In re E-P-, 21 I&N Dec. 860, 862 (BIA 1997). After reviewing the record in it's entirety, the Court find the respondent's claim to be unconvincing and not credible. The respondent based her asylum application on the fact that she was required to take a urine

test before her 18th birthday. She indicated that 18 is a required age for all young ladies in the community. The community require a urine test or a pregnancy test. The respondent here has testified here the record has reflected and even her attorney has indicated that she was still 17, was not 18 at the time of the request. The respondent has indicated here as well that she may have only been 16-years-old at the time of the alleged requirements for her to come for her pregnancy test. Apart from the respondent's own self-serving statements there is nothing in the record here to verify that, in fact, that this gentleman came to her apartment or to her home with the pregnancy requirement by the family planning agency. The respondent has further testified here that all ladies at 18 are required to have a pregnancy test as well. The Court notes that the respondent has testified here that her two sisters, 20 and 19 years of age were required to have a pregnancy test as well, but did not do so and apparently no adverse affect occurred to them nor is the respondent aware of any adverse affect to her sisters.

Therefore, the Court finds under these circumstances it is incredible that the respondent would, in fact, be required to take a pregnancy test prior to her 18th birthday, that her assertion that her pants were pulled down for her to have a urine test and then, in fact, she was unable to give a urine test, apparently she had not sufficient bladder to give a test also undercuts her claim her. Further the Court finds that the

assertions here that she was detained by the family planning because of a cousin who was pregnant and was required to appear for a pregnancy test while she was pregnant after having a child, a son who was born and was four years of age, also is not persuasive here. The cousin has indicated here as well that she, in fact gave birth to a child, apparently at an unknown location outside of where the respondent's cousin normally lived and apparently is living in an area other than where she normally did and that apparently it was undetected and apparently is prospering. There is nothing in the record to show here that that cousin was in fact pregnant by the family planning. There is nothing in the record to show that the family planning had any basis to detain the respondent upon her return, if, in fact, the family planning had never found the cousin and has never verified that the cousin was, in fact, pregnant. It is speculation here. And the Court does not find under these circumstances the respondent a viable fear of persecution by the family planning program. She was never pregnant, she was never sterilized, she has never received an abortion, she has never had an IUD inserted, she was never married. There is no reason for the family planning would do so as well. And as Government has asserted in the Country Reports, the Fujian Province the policy is generally a one child policy, however, in some southern, urban areas, if the parent's first child is a female, they may apply for a set number of years, usually four, to conceive a second

child in the hope that it will be a male. Fujian Province's lax enforcement of family planning rules has been criticized in the official press.

And apparently there is a lax enforcement in the area that the respondent resides in. The Court further notes that the respondent's testimony is unconvincing, she has advised the Court that she had a Chinese passport when she left China. She asserts here that she traveled on with a Japanese passport. There's nothing to verify that she, in fact, traveled with a Japanese passport. She indicated the passport was destroyed before she landed in Miami. There is nothing to show that, in fact, that the respondent had been able to travel on her Chinese passport. Her assertions that the Chinese passport was returned home is also questionable and the question that in fact, that the respondent has testified now that that Chinese passport was given over to the alleged snakehead also seems to be questionable and not convincing. The fact that respondent has testified here that she had no family in the United States and her statement at the airport indicated that she had an aunt from her mother's side, also undercuts her veracity as well here. The respondent has testified here that she made securitis trip from China to Thailand, from Thailand to India to India to Turkey from Turkey to Curacao from Curacao to Miami and this may well be a route that the respondent had taken through a normal course, there is nothing to show here that the respondent could not return back to

China under these circumstances. Because of those inconsistencies the fact that her statements here are not contradictory in part does not convince the Court that the respondent's fear is well-taken.

Burden of Proof

Respondent's testimony is not credible, therefore her testimony alone is not sufficient to meet her burden of proof. 8 C.F.R. 1208.13(a). Other than the testimony, the Court looks at the corroborating evidence submitted by the respondent here. The fact that she obtained an x-ray showing that she had gastritis does not verify that this was done as a result of a detention. There is nothing here to verify that she was, in fact, detained. That this may have been a document obtained in the normal course. The respondent's fears of returning to China is not convincing and most damaging is the fact that her cousin has indicated here that she had a child and it was born outside of the island, apparently the cousin is living the county. Whether or not we know that that is in fact the case, or whether or not the cousin wrote that in support of the respondent's application here is still problematical. But assuming that to be genuine, the Court finds under these circumstances that there's no showing that the respondent herself could relocate in China and the Court notes the Country Reports there indicate there is a mass migration of people from the provinces to cities as well. And that this would bode well under those circumstances. The Court does not find her

testimony under these circumstances credible. But arguendo if I were to find her testimony to be credible and if the events, in fact, took place, the Court does not believe that any of them arise to the level of past persecution and therefore the Court finds that she has not established future persecution under these circumstances and for those reasons the Court would deny her request for asylum for failure of establishing her burden of proof in the above requirements as well, credible evidence to establish those facts.

Withholding of Removal

Respondent has requested withholding of removal under Section 241(b)(3). To be eligible for withholding of removal pursuant to Section 241(b)(3) of the Act, the applicant must demonstrate a clear probability of persecution from the country designated for removal on account of race, religion, nationality, membership in a particular social group or political opinion. See INS v. Stevic, 467 U.S. 407 (1984); Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987). An applicant must also establish that it is more likely than not that he or she would be subject to persecution for one or more of the enumerated grounds.

Because the respondent's failed to meet the well-founded fear standard required for asylum, she has necessarily failed to meet the more stringent required for clear probability of persecution required for withholding of removal. Accordingly, the respondent's application for withholding of removal will also

be denied.

Torture Convention

For asylum applicants who file on or after April 1, 1997 an applicant shall be considered for eligibility for withholding of removal under the United Nations Convention Against Torture or other cruel or inhuman or degrading treatment or punishment ("Torture Convention") if the applicant requests such consideration or if the evidence presented by the alien in the case that an alien may be tortured in the country of removal. See 8 C.F.R. 1208.13(c)(1). An applicant for withholding of removal under torture convention bears a burden of proving that it is "more likely than not" that he or she would be tortured if removed to proposed country of removal. 8 C.F.R. 1208.16(c)(2). As with asylum, this burden can be established by testimony without corroboration if the testimony is credible. See also Matter of Y-B-, 21 I&N Dec. 1136 (BIA 1998). In Matter of Acosta, 19 I&N Dec. 211 (BIA 1985). In assessing whether the applicant has satisfied the burden of proof, the Court must consider all evidence relevant to the possibility of future torture, including "evidence of past torture inflicted upon the applicant; evidence the applicants could relocate to a part of the country of removal where he or she is not likely to be tortured; evidence of gross, flagrant or mass violation of human rights within the country of removal, where applicable; and other relevant information regarding conditions in the country of

removal." 8 C.F.R. 1208.16(c)(3).

"Torture" is defined as "any act by which severe pain or suffering whether physical or mental is intentionally inflicted on a person." 8 C.F.R. 1208.18(a)(1). This severe or suffering must be inflicted on the applicant or on a third person for one of four purposes specified: 1. to obtain information or confession; 2. to punish for an act he or she committed or is suspected of having committed; 3. to intimidate or coerce; or 4. for any reason based on discrimination of any kind. In addition, in order to constitute "torture" the "act must be directed against a person in the offender's custody or physical control." 8 C.F.R. 1208.18(a)(6). Further, the pain or suffering must be inflicted "by or at the instigation of or with the consent or acquiescence of a public official or other persons acting in an official capacity." 8 C.F.R. 1208.18(a)(1). "Acquiescence" requires that the public official have prior awareness of the activities and "thereafter breach his or her legal responsibility to intervene to prevent such activity". 8 C.F.R. 1208.18(a)(7). Torture is an "extreme form of cruel, inhuman treatment" but does not include pain or suffering arising from lawful sanction. 8 C.F.R. 1208.18(a)(2), (3). Lawful sanctions, however, do not include sanctions which defeat the objectives and purposes of Torture Convention. 8 C.F.R. 1208.18(a)(3).

As discussed above, the respondent has failed to establish that she has a well-founded fear of persecution if removed to

China. Specifically, respondent has failed to present any credible evidence that she was tortured in the past or that the Chinese Government would acquiesce to her torture if she was returned to China. In short, the respondent has failed to establish that it is more likely than not that she will be tortured if removed to China. As such, respondent's request for withholding of removal under Torture Convention must be denied.

Accordingly, the following orders are entered.

ORDER

IT IS HEREBY ORDERED that respondent's application for asylum, withholding of removal under the Act and withholding of removal under the Torture Convention are denied.

IT IS FURTHER ORDERED that respondent be removed as charged in the Notice to Appear be removed to the People's Republic of China.

(b) (6)
Immigration Judge

CERTIFICATE PAGE

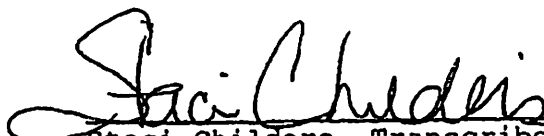
I hereby certify that the attached proceeding before
JUDGE (b) (6) in the matter of:

(b) (6)

A (b) (6)

(b) (6)

is an accurate, verbatim transcript of the cassette tape 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.


Staci Childers, Transcriber

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November 2, 2006
(completion date)

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