



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

5201 Leesburg Pike, Suite 1300  
Falls Church, Virginia 22041

**Cox, Theodore N., Esquire  
401 Broadway  
Suite 701  
New York, NY 10013-0000**

**Office of the District Counsel/HON  
595 Ala Moana Boulevard  
Honolulu, HI 96813-4999**

**Name: CHEN, ZHU QIANG**

**A76-280-047**

**Date of this notice: 02/14/2003**

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

A handwritten signature in black ink that reads "Jeffrey Fratter".

**Jeffrey Fratter  
Chief Clerk**

Enclosure

Panel Members:  
**HURWITZ, GERALD S.**

U.S. Department of Justice  
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

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File: A76 280 047 - Hagatna

Date:

FEB 14 2003

In re: ZHU QIANG CHEN

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Theodore N. Cox, Esquire

CHARGE:

Notice: Sec. 212(a)(5)(A)(i), I&N Act [8 U.S.C. § 1182(a)(5)(A)(i)] -  
No valid labor certification

Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] -  
Immigrant - no valid immigrant visa or entry document

APPLICATION: Reopening; reconsideration

ORDER:

PER CURIAM. This case has been before us on several occasions. On May 24, 2000, we dismissed the respondent's appeal from an Immigration Judge's decision denying his application for asylum and withholding of removal, agreeing with the Immigration Judge's conclusion that the respondent did not testify credibly. The respondent had based his asylum application on his claimed violations of China's family planning laws.

On July 16, 2001, the respondent filed a motion to reopen based on the "new circumstance" that he had become a follower of the Zhong Gong movement, whose members are allegedly persecuted in China. We denied this motion on August 17, 2001, finding that it was untimely. In our decision, we also noted that the respondent had made some statements regarding his asylum claim, but had not shown "materially changed circumstances" in China, so as to come within the exception to the time restrictions on motions. *See* 8 C.F.R. § 3.2(c)(3)(ii).

The respondent then filed, on September 19, 2001, a "Motion for Reopening/Reconsideration/Remand Based on Changed Circumstance." In this motion, the respondent again stated that he had become a member of Zhong Gong while in Immigration and Naturalization Service detention in Guam with Zhang, Hong Bao, the founder and leader of the Zhong Gong organization. The respondent noted that this Board had granted Mr. Zhang's asylum application on June 13, 2001. The respondent submitted with this motion considerable documentary evidence regarding Zhong Gong and Zhang's case. The respondent asserted that this evidence warranted the reopening and reconsideration of his case.

On January 31, 2002, we denied the respondent's motion because it exceeded the numerical limitations for motions to reconsider. *See* 8 C.F.R. § 3.2(b)(2).

This case is now before us pursuant to the August 16, 2002, order of the United States Court of Appeals for the Ninth Circuit granting the government's motion to remand. In that motion, the government sought a remand to the Board "for reconsideration of the basis for its denial of Petitioner's motion to reconsider its January 31, 2002 order."

Pursuant to the court's order, we will consider the respondent's September 19, 2001, motion on the merits. We find that the respondent has made a prima facie showing of eligibility for asylum based on his involvement with the Zhong Gong, and we will therefore grant his motion and remand the case for a further hearing. We note that the evidence presented in support of the respondent's motion indicates that the Zhong Gong is a banned organization in China, and its members are often treated very harshly. Given these circumstances, we find that the respondent should be allowed to present his case regarding his involvement in the movement, and the possible ramifications of that involvement, to an Immigration Judge.

Finally, the respondent has recently filed an "Amended Motion to Remand Based on Lozada." In this motion and supporting documents, the respondent alleges that his prior counsel provided ineffective representation regarding his original asylum claim. As we have determined that a remand is necessary based on respondent's claimed involvement with the Zhong Gong, we do not find it necessary to rule on the Lozada claim at this time. On remand, the respondent should be given the opportunity to present any evidence he has regarding his overall persecution claim, and the Immigration and Naturalization Service of course shall have the opportunity to present evidence as well.

Accordingly, the decisions of the Board in this case dated August 17, 2001, and January 31, 2002, are vacated, the proceedings are reopened, and the record is remanded to the Immigration Judge for a further hearing.

  
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FOR THE BOARD