

November 1, 2005

Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS



FOR THE FIFTH CIRCUIT

No. 03-60670

XIAODONG LI,

Petitioner,

versus

ALBERTO R. GONZALES,
Attorney General of the United States,

Respondent.

Petition for Review of an Order from
the Bureau of Immigration Appeals

Before GARWOOD, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:

Xiaodong Li initially petitioned this court for review of a final order of the Board of Immigration Appeals (BIA) reversing the Immigration Judge's decision granting Li withholding of removal pursuant to 8 U.S.C. § 1253(h) of the Immigration and Nationality Act. This court affirmed the decision of the BIA and Li timely filed a petition for rehearing, which has not been ruled on; however, the Department of Homeland Security (DHS) petitioned the BIA to reopen the removal proceedings against Li based on new evidence and to permit the DHS to withdraw its appeal. On October 6, 2005, the BIA granted the DHS's motion, vacated its decision, and reinstated the

Immigration Judges's February 28, 2000 decision granting Li withholding of removal. Li subsequently filed a motion to vacate the panel's decision.

Accordingly, Li's motion to vacate is GRANTED, the previous opinion of this panel published at 420 F.3d 500 (5th Cir. 2005) is VACATED and Li's petition for review and his petition for rehearing are DISMISSED as moot. *See Discipio v. Ashcroft*, 417 F.3d 448, 450 (5th Cir. 2005).