

JAN 26 2009

Haniyah v Mukasey 06-73533

PREGERSON, Circuit Judge, dissenting:

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

I dissent. The petitioner—the mother of an eight-year-old, American-born United States citizen daughter—withdrawed her asylum application before the Immigration Judge ruled on its merits. I would remand to the BIA in light of our decision in *Chen v. Mukasey*, 527 F.3d 935 (9th Cir. 2008) (remanding to the BIA to interpret 8 U.S.C. § 1158(d)(6) and to consider whether withdrawal of an asylum application renders a subsequent finding of frivolousness moot).