



## Detail

Complaint Number: 784

Immigration Judge: (b)(6)

Complaint Received Date: 07/24/13

Current ACIJ  
Dufresne, Jill H.

Base City  
(b) (6)

Status  
CLOSED

Final Action  
Complaint concluded --  
corrective action already taken

Final Action Date  
07/30/13

### Past ACIS:

A-Numbers(s)	Complaint Nature(s)	Complaint Source(s)
(b)(6)	Due process	Respondent Atty (b) (6) (b) (6)

Complaint Narrative: lengthy continuance of case without respondent's concurrence

### Complaint History

07/24/13 Complaint referred to ACIJ  
07/30/13 Complaint concluded -- corrective action already taken - Case has been reset to an early date  
07/30/13 Database entry created

## EOIR FOIA Processing (EOIR)

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**From:** IJConduct, EOIR (EOIR)  
**Sent:** Tuesday, July 30, 2013 3:21 PM  
**To:** Dufresne, Jill (EOIR)  
**Cc:** Keller, Mary Beth (EOIR)  
**Subject:** FW: Complaint of (b) (6)  
**Attachments:** image001.jpg

-----Original Message-----

**From:** (b) (6)  
**Sent:** Monday, July 29, 2013 4:40 PM  
**To:** IJConduct, EOIR (EOIR)  
**Cc:** (b) (6)  
**Subject:** Re: Complaint of (b) (6)

Thank you Judge Dufresne. We appreciate your action and accept the February 3, 2014 date for now.

Sincerely,

(b) (6)

On Jul 29, 2013, at 2:23 PM, "IJConduct, EOIR (EOIR)" <EOIR.IJConduct@usdoj.gov<mailto:EOIR.IJConduct@usdoj.gov>> wrote:

Good afternoon, (b) (6)

This is in response to your email to the Office of the Chief Immigration Judge dated 7/24/13 requesting an earlier hearing date for your client (b) (6). Judge (b) (6) has an opening on (b) (6) docket for 2/3/14 at 1 pm. Unless we hear differently from you, your client's case will be moved to that date and time. A hearing notice will be mailed to you reflecting this new date. You may, of course, file additional motions to advance your client's case.

Sincerely,

Jill Dufresne

ACIJ

From: (b) (6)  
Sent: Wednesday, July 24, 2013 4:24 PM  
To: IJConduct, EOIR (EOIR)  
Cc: (b) (6)  
Subject: Complaint of (b) (6)

To the Office of the Chief Immigration Judge:

This is a complaint on behalf of (b) (6), a lawful permanent resident of the United States, against the (b) (6) Immigration Court and Immigration Judge (IJ) (b) (6) for: (1) creating an unreasonable delay in his removal proceedings and (2) refusing to address requests for an earlier hearing date based on his daughter's imminent likelihood of aging out of derivative status. I request prompt non-disciplinary corrective action in the form of requiring IJ (b) (6) consent to hear the case sometime between October and December 2013, or alternatively transferring the case to another IJ who can hear it.

(b) (6) has been in removal proceedings before IJ (b) (6) in (b) (6) since October 2009, following USCIS' denial of his I-751 waiver petition. He asserts that he entered into his marriage with his ex-wife in good faith. Since being placed in removal proceedings, he has never requested a continuance. He first appeared before IJ (b) (6) on July 15, 2010, with former counsel. During this Master Calendar hearing, the IJ scheduled an individual hearing for March 27, 2013, to review the denial of his I-751 waiver petition. (b) (6) was prepared to proceed with his case. But in July 2012, (b) (6) attorney moved to withdraw. IJ (b) (6) granted the motion and then, 2 months later, without a request for a continuance from either the DHS or the Respondent, struck the individual hearing and set a March 14, 2013 Master Calendar hearing.

(b) (6) later retained me to represent him. On March 14, 2013, we appeared at the (b) (6) immigration court. During the hearing, I explained the procedural history of the case, indicated to IJ (b) (6) that (b) (6) had wanted to proceed with his March 27, 2013 individual hearing, and asked the IJ for an early hearing because (b) (6) daughter will turn 21 years old on March 22, 2014. IJ (b) (6) initially stated that (b) (6) would give us an "early" hearing, but then without explanation scheduled that hearing for December 5, 2016. (b) (6) refused to reconsider the date but indicated (b) (6) would entertain a motion to exchange the hearing date with another case if we submitted such a motion.

On April 3, 2013, we filed a Motion to Exchange Hearing Dates to request that IJ (b) (6) reschedule (b) (6) individual hearing date for August 26, 2013. With the motion, we included affidavits from (b) (6) and another respondent on his docket, in which both respondents agreed to swap individual hearing dates to allow (b) (6) to appear on August 26, 2013, and the other respondent to appear on December 5, 2016. IJ (b) (6) denied the motion on April 17, 2013, because "The requested date has an alien with various arrests/convictions for domestic issues."

On May 24, 2013, we filed a second Motion to Exchange Hearing Dates to request that the IJ reschedule (b) (6) individual hearing date for August 7, 2013. The respondent scheduled for that date has no arrests or convictions. We included similar affidavits as the previous motion to exchange hearing dates. In addition, on May 31, 2013, we filed a separate Motion to Advance Hearing Date, arguing that (b) (6) a Lawful Permanent Resident of the United States, is eligible to apply for naturalization but for his removal proceedings and that he would like the opportunity to petition his daughter for permanent residency before she turns 21 years of age on March 22, 2014. The motion referred to the Immigration Court Practice Manual, that states "examples of circumstances under which a hearing might be advanced include: imminent ineligibility for relief, such as a minor alien 'aging out' of derivative status." On July 8, 2013, Immigration Judge (b) (6) denied both motions, stating "August 7th currently is 'double book' @ 9:00 a.m. with case #...." This decision addresses the May 24th motion to exchange hearing dates but is entirely nonresponsive to our May 31st motion to advance hearing date. IJ (b) (6) apparently did not review (b) (6) docket to look for any other available hearing date other than the currently scheduled hearing date of December 5, 2016. This, despite the fact that I am aware of other instances, including a case represented by myself that came before IJ (b) (6) on a master calendar

hearing 2 months after (b) (6), in which IJ (b) (6) scheduled an individual hearing date 16 months before December 5, 2016.

If the IJ grants (b) (6) I-751 petition, filed back in 2008, (b) (6) will be immediately eligible to apply for naturalization, and his daughter will likely be able to obtain Lawful Permanent Resident status based on her father's pending I-130 petition before she turns 21. But if the hearing remains scheduled for December 2016, (b) (6) will have been in removal proceedings for over 7 years and his daughter will undoubtedly have aged out prior to (b) (6) being given a chance to qualify for citizenship.

At this point we have exhausted our options to address this matter directly with IJ (b) (6). As a long-term Lawful Permanent Resident of the U.S., (b) (6) should be able to enjoy certain rights, including the right to a reasonably prompt hearing, the right to apply for naturalization, the right to classify his daughter in an appropriate visa classification, and the right to travel freely and return to the U.S. without fear of being detained due to the overly prolonged removal proceedings that are pending against him. Denial of a hearing in this case owing to excessive delay is a denial of his rights to due process of law. Thus, I respectfully request that EOIR either requires Immigration Judge (b) (6) to schedule (b) (6) for an individual hearing in 2013 or else transfer the case to another judge's docket.

Beyond filing this complaint, (b) (6) has authorized me to file an action in Federal District Court seeking to compel the Executive Office for Immigration Review to provide him with a hearing inasmuch as EOIR and IJ (b) (6) have unreasonably delayed the adjudication of (b) (6) I-751. We hope to avoid having to engage in such litigation and want to resolve this matter with your agency, within the next 30-60 days.

Thank you for your consideration and please let me know if you need any additional information.

Sincerely,

(b) (6)

<image001.jpg>

Please visit our renovated website at (b) (6) which allows client access to case status, enhanced information on services, and other convenient features.

# 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"/> BIA <input type="checkbox"/> ___ Circuit <input type="checkbox"/> EOIR <input type="checkbox"/> DHS <input type="checkbox"/> Main Justice <input checked="" type="checkbox"/> respondent's attorney <input type="checkbox"/> respondent <input type="checkbox"/> OIL <input type="checkbox"/> OPR <input type="checkbox"/> OIG <input type="checkbox"/> media <input type="checkbox"/> third party (e.g., relative, uninterested attorney, courtroom observer, etc.) <input type="checkbox"/> other: _____	
complaint receipt method	
<input type="checkbox"/> letter <input type="checkbox"/> IJC memo (BIA) <input checked="" type="checkbox"/> email <input type="checkbox"/> phone (incl. voicemail) <input type="checkbox"/> in-person <input type="checkbox"/> fax <input type="checkbox"/> unknown <input type="checkbox"/> other: _____	
<b>date of complaint source</b> (i.e., date on letter, date of appellate body's decision) 7/15 <sup>th</sup> / 13	<b>complaint source contact information</b> name: _____ address: _____ email: _____ phone: _____ fax: _____
<b>additional complaint source details</b> (i.e., DHS component, media outlet, third party details)	

complaint details		
IJ name	base city	ACIJ
(b) (6)	(b) (6)	Dupresne
relevant A-number(s)	date of incident	
A(b) (6)	7/8/13	
allegations		
lengthy continuance of case without Respondent's concurrence		
nature of complaint		
<input type="checkbox"/> in-court conduct <input type="checkbox"/> out-of-court conduct <input checked="" type="checkbox"/> due process <input type="checkbox"/> bias <input type="checkbox"/> legal <input type="checkbox"/> criminal <input type="checkbox"/> incapacity <input type="checkbox"/> other: _____		

