



Detail

Complaint Number: 737

Immigration Judge: (b)(6)

Complaint Received Date: 04/03/13

Current ACIJ
Fong, Thomas Y. K.

Base City
(b)(6)

Status
CLOSED

Final Action
Oral counseling

Final Action Date
04/05/13

Past ACIS:

A-Numbers(s)	Complaint Nature(s)	Complaint Source(s)
(b)(6)	In-court conduct	BIA

Complaint Narrative: Although the BIA affirmed the IJ's findings denying the R's application for LPR COR both statutorily and as a matter of discretion, the BIA Chair referred the matter due to statements made by the IJ.

Complaint History

04/03/13 Complaint referred to ACIJ
04/05/13 Database entry created
04/05/13 Oral counseling

Sep 11, 2013

1 of 1

(b) (6)



Memorandum

Subject	Date
(b) (6) (BIA March 28, 2013)	April 3, 2013

To

Brian O'Leary, Chief Immigration Judge

MaryBeth Keller, Assistant Chief Immigration Judge

From

David L. Neal, Chairman

Attached please find a copy of the Board's decision dated March 28, 2013, and relevant portions of the record in the above-referenced matter.

The Board asked me to bring this case to your attention.

This case will be held at the Board in Suzette Henderson's office for one week. If you wish to review the record, please contact Suzette Henderson.

Attachments

Falls Church, Virginia 22041

File: A (b) (6)

Date:

MAR 28 2013

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

APPLICATION: Cancellation of removal under section 240A(a) of the Act

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's December 6, 2012, decision denying his application for cancellation of removal under section 240A(a) of the Act, 8 U.S.C. § 1229b(a), and ordering his removal.¹ The Board reviews findings of fact under a clearly erroneous standard, while all other issues, including whether the parties have met the relevant burden of proof, are reviewed de novo. 8 C.F.R. §§ 1003.1(d)(3)(i)-(ii). The respondent's appeal will be dismissed.

The respondent does not contest the Immigration Judge's determination that he is removable under section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i), as the result of having knowingly encouraged, induced, assisted or abetted an alien in entering the United States in violation of law (I.J. at 2-4). We therefore consider this issue waived on appeal. *See Matter of Edwards*, 20 I&N Dec. 191, 196-97 n.4 (BIA 1990).

We affirm the Immigration Judge's denial of the respondent's application for cancellation of removal for certain permanent residents under section 240A(a) of the Act. Upon our de novo review, we agree with the Immigration Judge that the respondent did not establish that he warrants such relief as a matter of discretion. *See Matter of C-V-T*, 22 I&N Dec. 7, 11 (BIA 1998) (holding that the Immigration Judge must balance the adverse factors evidencing the alien's undesirability as a permanent resident with the social and humane considerations presented on his behalf to determine whether a grant of relief is appropriate). The Immigration Judge recognized that the respondent has lived in the United States as a lawful permanent resident since 1995 and possesses family ties in the United States (I.J. at 4-5). However, we agree with the Immigration Judge that such equities are outweighed by the respondent's criminal behavior, which includes multiple convictions for driving under the influence, illegal drug use, and participation in an attempt to assist an alien in illegally entering the United States (*see* I.J. at 3-5). *See Matter of Marin*, 16 I&N Dec. 581 (BIA 1978) (discussing the appropriate balancing of favorable and unfavorable factors in considering an application for discretionary relief). We

¹ We note that the respondent has filed a motion for a custody redetermination hearing with the Board. However, the issue of bond is not properly before us as removal proceedings are conducted separate and apart from bond proceedings. *See* 8 C.F.R. § 1003.19(d). Further, a motion for bond is appropriately directed to the Immigration Judge, rather than this Board. *See* 8 C.F.R. § 1003.19(d)(1).

agree with the Immigration Judge that is significant that the respondent testified that he fabricated the contents of a sworn statement to immigration officers about the attempt to assist an alien in illegally entering the United States because, according to the respondent, he was under the influence of drugs and regarded his interaction with immigration officers as "a game" (*see* I.J. at 2-4; Tr. at 49-51). *Cf. Matter of C-V-T-*, *supra* at 13-14 (recognizing that an alien's cooperation with authorities and expression of remorse may be considered as mitigating factors). We acknowledge the respondent's argument that his removal from the United States will result in hardship to himself and family members, but we are not persuaded that the respondent has established that he merits the relief of cancellation of removal under section 240A(a) of the Act as a matter of discretion. Accordingly, we affirm the Immigration Judge's discretionary denial of the respondent's application for this form of relief.

The respondent has not appealed the Immigration Judge's denial of voluntary departure, and we therefore consider this issue waived on appeal. *See Matter of Edwards, supra*.

For the aforementioned reasons, the following order will be entered.

ORDER: The respondent's appeal is dismissed.



FOR THE BOARD

IMMIGRATION COURT

(b) (6)

In the Matter of

Case No.: A (b) (6)

(b) (6)

Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Dec 6, 2012.
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

- ☐ The respondent was ordered removed from the United States to or in the alternative to .
- ☒ Respondent's application for voluntary departure was denied and respondent was ordered removed to or in the alternative to .
- ☐ Respondent's application for voluntary departure was granted until upon posting a bond in the amount of \$ _____ with an alternate order of removal to .

Respondent's application for:

- ☐ Asylum was () granted () denied () withdrawn.
- ☐ Withholding of removal was () granted () denied () withdrawn.
- ☐ A Waiver under Section _____ was () granted () denied () withdrawn.
- ☒ Cancellation of removal under section 240A(a) was () granted () denied () withdrawn.

Respondent's application for:

- ☐ Cancellation under section 240A(b)(1) was () granted () denied () withdrawn. If granted, it is ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
 - ☐ Cancellation under section 240A(b)(2) was () granted () denied () withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
 - ☐ Adjustment of Status under Section _____ was () granted () denied () withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
 - ☐ Respondent's application of () withholding of removal () deferral of removal under Article III of the Convention Against Torture was () granted () denied () withdrawn.
 - ☐ Respondent's status was rescinded under section 246.
 - ☐ Respondent is admitted to the United States as a _____ until _____.
 - ☐ As a condition of admission, respondent is to post a \$ _____ bond.
 - ☐ Respondent knowingly filed a frivolous asylum application after proper notice.
 - ☐ Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.
 - ☐ Proceedings were terminated.
 - ☐ Other: _____
- Date: 11/20/12 DEC - 6 2012

Appeal: Waived/Reserved Appeal Due By: Jan 7, 2013

ALIEN NUMBER: (b) (6)

ALIEN NAME: (b) (6)

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: [] ALIEN [X] ALIEN c/o Custodial Officer [] ALIEN's ATT/REP (P) DHS
DATE: 1-28-13 BY: COURT STAFF (b) (6)
Attachments: [] EOIR-33 [] EOIR-28 [] Legal Services List [] Other

Q6

IMMIGRATION COURT

(b) (6)

In the Matter of

Case No.: A(b) (6)

(b) (6)

Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Dec 6, 2012.
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

- ☐ The respondent was ordered removed from the United States to or in the alternative to .
- ☒ Respondent's application for voluntary departure was denied and NA-110 respondent was ordered removed to or in the alternative to .
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Respondent's application for:

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- ☐ Withholding of removal was ☐ granted ☐ denied ☐ withdrawn.
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- ☒ Cancellation of removal under section 240A(a) was ☒ granted ☐ denied ☐ withdrawn.

Respondent's application for:

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- ☐ Respondent is admitted to the United States as a _____ until _____.
- ☐ As a condition of admission, respondent is to post a \$ _____ bond.
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- ☐ Proceedings were terminated.
- ☐ Other: _____

Date: Dec 6, 2012Appeal: Waived/Reserved Appeal Due By: Jan 7, 2013

(b) (6)

ALIEN NUMBER: (b) (6)

ALIEN NAME: (b) (6)

CERTIFICATE OF SERVICE *Dec 6 2012*
THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: ☐ ALIEN ☐ ALIEN c/o Custodial Officer ☐ ALIEN's ATT/REP ☒ DHS
DATE: 12/04/2012 BY: COURT STAFF 20
Attachments: ☐ EOIR-33 ☐ EOIR-
28 ☒ Legal Services List ☐ Other

Q6

1 been born?

2 A. My children.

3 Q. Well, you don't even live with your children.

4 A. I live with them, I lived with them for a short time.

5 But after the drugs and after I divorced my wife, that's when

6 all of the problems --

7 Q. I guess

8 A. -- started --

9 Q. -- that's my --

10 A. -- to happen.

11 Q. I guess that's my problem. You, you, you haven't

12 taken care of your children at all. (b) (6) birth

13 certificate doesn't even have your name on it.

14 A. I didn't sign. The mother never told me to go and

15 sign. My daughters miss me. I want to be with them. I want to

16 be a good father to them.

17 Q. Sir, there's absolutely nothing in your case that

18 would cause me to want to grant and allow you to remain in the

19 United States. And I mean that completely. You've been a

20 complete and utter failure in virtually everything you've done.

21 You can't even make a statement to Immigration correctly without

22 claiming that your -- and your explanation is you're all drugged

23 up? Just being drugged up is enough to make me want to throw

24 you out of this United States. I mean: how dare you come into

25 Court to offer that as an explanation. That's not an

1 explanation, that's the, that's the, that's what convinces me is
2 you need to be deported so that you don't ever come into contact
3 with another U.S. citizen without that person being on notice of
4 the type of danger a person you are. So I'm denying your
5 application. I'm going to indicate a reservation for you, which
6 means you can appeal this case. You have 30 days to do it. And
7 if you the --

8 A. I'm telling --

9 Q. -- appeal --

10 A. -- you the truth. You want me to tell, you want me to
11 tell you the truth, I'm telling you the truth.

12 Q. Well, and I -- with, with what you've told me --

13 A. -- my family's --

14 Q. -- enough --

15 A. -- there.

16 Q. -- you told me enough that I don't want you in the
17 United States. You don't deserve it. As you said, you're all
18 drugged up. We don't need someone who's all drugged up period.
19 And you've offered no explanation as to why you'd go into Mexico
20 and bring in some person into the United States. The statement
21 by the officer, which I cannot consider, with your statement by
22 yourself, which you've initialed, I can. It, it doesn't offer a
23 good explanation but at least it makes sense. Your statement
24 makes no sense at all. Okay, I'll explain to you in a minute
25 how to appeal this --

Immigration Judge Complaint Intake Form

HQ Use Only:
complaint #: _____
source: first / subsequent

Date Received at OCIJ: _____

complaint source type	
<input type="checkbox"/> anonymous <input type="checkbox"/> respondent's attorney <input type="checkbox"/> third party (e.g., relative, uninterested attorney, courtroom observer, etc.) <input type="checkbox"/> other: _____	<input checked="" type="checkbox"/> BIA <input type="checkbox"/> respondent <input type="checkbox"/> OIL <input type="checkbox"/> Circuit <input type="checkbox"/> EOIR <input type="checkbox"/> OPR <input type="checkbox"/> DHS <input type="checkbox"/> OIG <input type="checkbox"/> Main Justice <input type="checkbox"/> media
complaint receipt method	
<input type="checkbox"/> letter <input type="checkbox"/> fax	<input checked="" type="checkbox"/> IJC memo (BIA) <input type="checkbox"/> unknown <input type="checkbox"/> email <input type="checkbox"/> phone (incl. voicemail) <input type="checkbox"/> in-person <input type="checkbox"/> other: _____
date of complaint source (i.e., date on letter, date of appellate body's decision) BIA referral dated 4/13/2013	complaint source contact information
additional complaint source details (i.e., DHS component, media outlet, third party details, A-number) (b) (6) BIA 3/28/2013	name: BIA Chairman David Neal address: _____ _____ _____ email: _____ phone: _____ fax: _____

IJ name	base city	ACIJ
(b) (6)	(b) (6)	Thomas Y.K. Fong
relevant A-number(s)	date of incident	
A(b) (6)	December 6, 2012	
allegations		
Although the BIA affirmed the IJ's findings denying R. application for LPR COR both statutorily and as a matter of discretion --- the BIA Chair referred the matter to the CIJ due to statements on the DAR record made by the IJ during the Dec 6, 2012 merits hearing. Specifically statements the IJ made of personal and non-judicious nature about R's conduct while living in the US as a LPR. See Transcript at page 53, lines 17 -25; and page 54, lines 1-4.		
nature of complaint		
<input checked="" type="checkbox"/> in-court conduct <input type="checkbox"/> incapacity	<input type="checkbox"/> out-of-court conduct <input type="checkbox"/> other: _____	<input type="checkbox"/> due process <input type="checkbox"/> bias <input type="checkbox"/> legal <input type="checkbox"/> criminal

[illegible]