



Detail

Complaint Number: 734

Immigration Judge: (b)(6)

Complaint Received Date: 03/18/13

Current ACIJ
Fong, Thomas Y. K.
Past ACTIS:

Base City
(b)(6)

Status
CLOSED

Final Action
Oral counseling

Final Action Date
04/08/13

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

Complaint Narrative: Source asserts IJ in a MC hearing "vehemently and vociferously rejected my client application for asylum out of hand."

Complaint History	
03/18/13	Complaint referred to ACIJ
03/19/13	Database entry created
04/08/13	Oral counseling

EOIR FOIA Processing (EOIR)

From: Fong, Thomas (EOIR)
Sent: Tuesday, March 19, 2013 10:29 AM
To: Boone-Fisher, Sabina (EOIR)
Cc: O'Leary, Brian (EOIR); Keller, Mary Beth (EOIR); Moutinho, Deborah (EOIR)
Subject: RE: OCIJ Correspondence- Control No: 2548-IJ Complaint against Judge (b) (6)

Follow Up Flag: Follow up
Flag Status: Completed

Acknowledge receipt and will complete as requested.

Thomas Y.K. Fong
Assistant Chief Immigration Judge
Immigration Court/EOIR/DOJ
606 South Olive Street, 15th Floor
Los Angeles, CA 90014
(213)894-2811

(b) (6)

From: Boone-Fisher, Sabina (EOIR)
Sent: Tuesday, March 19, 2013 6:10 AM
To: Fong, Thomas (EOIR)
Cc: O'Leary, Brian (EOIR); Boone-Fisher, Sabina (EOIR); Keller, Mary Beth (EOIR); Moutinho, Deborah (EOIR)
Subject: OCIJ Correspondence- Control No: 2548-IJ Complaint against Judge (b) (6)
Importance: High

Good Morning Judge Fong,

Judge O'Leary asked that I assign and forward the attached correspondence to you and ACIJ Keller. As per CIJ O'Leary, please investigate allegations and provide a reply. Once completed please provide me an electronic copy of your signed reply so I can close out this item in the OCIJ correspondence database. Please take note the due date of this correspondence is: cob April 19, 2013.

Thank you,
Sabina Boone-Fisher
Staff Assistant
Office of the Chief Immigration Judge
703-605-(b) (6) (ph)
703-305-1448 (fax)

(b) (6)

(b) (6)

Judge

(b) (6)

(b) (6)

*ACIS Keller
aka ACIS
Fung*

March 12, 2013

Office of the Chief Immigration Judge
Brian M. O'Leary
Chief Immigration Judge
5107 Leesburg Pike, Suite 2500
Falls Church, VA 22041

E.O.I.R.
O.C.I.J.

RECEIVED
DEPARTMENT OF JUSTICE
2013 MAR 18 PM 2:07

Re: A (b) (6)
Complaint

Dear Judge O'Leary:

I am an immigration attorney. I am writing this letter because of my utmost concern regarding the fairness and prudence of proceedings in the above case in (b) (6) Immigration Court in the Master Calendar on June 14, 2012.

My client, a Mexican national, qualifies for relief in the form of Cancellation of Removal and also asylum/withholding and CAT. At the Master Calendar, we submitted my client's applications. Your immigration judge vehemently and vociferously rejected my client's application for asylum out of hand. (b) (6) claimed that the application was insufficient because we were unable to show past persecution.

In the first place, this is a fundamental misstatement of the law. Past persecution is not a requirement for an application for asylum. Past prosecution only creates a *presumption* of persecution were the alien to be returned to his country. 8 CFR 208.13(b)(1); *Matter of Chen*, 20 I&N Dec. 16 (1989); *Matter of A-T* 24 I&N Dec. 617, 622 (A.G. 2008). Even without a presumption, however, the applicant need only show objective evidence from which a reasonable person would experience a fear of persecution, which could be as little as "establishing a 10% chance of being shot, tortured, or [being] otherwise persecuted." *INS v. Cardoza-Fonseca* 480 U.S. 421 (1987); *Matter of Mogharrabi* 19 I&N Dec. at 439. Your immigration

judge has severely changed the standard to limit asylum applications by adding an absolute requirement that past persecution be demonstrated in every case (See proceedings of Master Calendar). (b) (6) has decided to take the law into (b) (6) own hands rather than following established law.

In the second place, (b) (6) vehemently rejected the lengthy brief presented by respondent which demonstrates that Mexican nationals with ties to the United States, and in particular those that are returned to Mexico after removal, are singled out for kidnapping for ransom by crime organizations. (b) (6) rejected all of the evidence presented as merely "country conditions." These are not "country conditions" if this constitutes objective evidence that the applicant is part of a recognized group that is experiencing terror at the hands of groups that are proven to be allied with, and protected by, elements of the foreign government, or at least which the government cannot control. As shown below, these are objectively proven facts. The immigration judge rudely and vehemently belittled the evidence I presented and categorized it as frivolous.

Subsequently, the *Los Angeles Times*, presented a carefully documented series of reports which verified *exactly and precisely* what I had claimed in immigration court. I attach a copy of a Los Angeles Times article which fully corroborates our claims. Among the materials submitted to the court, was a report from a non-governmental human rights group attesting that there are over 18,000 kidnappings per year in Mexico, and a report of the Mexican Congress indicating the involvement by government at some level in 22% of the crime in Mexico. The conditions those subjected to kidnapping endure, including severing of body parts, are clearly tantamount to torture. In addition, 50,000 people have been killed in drug violence in the past seven years. The fact that persons with ties to America and those deported are singled out for extortion and kidnapping makes this more than mere "country conditions." When the evidence clearly shows that the torturers and thugs are looking for *your respondent* then it is more than mere country conditions we are dealing with.

And yet for making this claim in immigration court, I was told that I was bringing a "frivolous" claim. The claim was rejected by the immigration judge without a hearing, and we were told point blank by the immigration judge that my client's claim for Cancellation of Removal would be denied as a penalty for bringing what (b) (6) described as a frivolous asylum claim. Your immigration judge's comments were insulting, abusive, and clearly unwarranted.

It is clear that your immigration judge is acting from ignorance of the law and ignorance of the facts. Perhaps, the matter strikes home very much to me. I

actually had a nephew kidnapped for ransom in Tijuana, who was released after the payment of \$330,000. So to me the matter is not frivolous. It is real, it is genuine, and it is objectively attested. In point of fact, anyone who claims, as your immigration judge does, that persons with ties to America are not subject to threat of kidnapping, is either blind or ignorant. (b) (6) is clearly not someone who has had to pay \$330,000 for the release of a family member. Frankly, I resent (b) (6) ignorance, abuse, threats, and accusations. I have been an attorney for thirty-five years. I do not bring frivolous lawsuits and I do not like being accused of bringing them by someone who is ignorant and a bully.

It is of benefit to the United States and the Department of Justice to have a judicial system that is informed, fair and just to deal with the claims of aliens. It is a disservice if instead of a fair, judicial court we devolve into a kangaroo tribunal which is abusive to the rights of respondents.

Lastly, I believe that there is a modicum of civility which is due in our immigration courts. It is conducive to sound administration and the minimum that the honor of our country deserves. At the hearing, during the setting of a new hearing date, the immigration judge failed to state the time of the hearing. I requested the time of the hearing. The immigration judge rudely refused my request and told me to just look at the notice. This type of rudeness is uncalled for. Your immigration judge, in addition to lacking the knowledge of the law and awareness of the facts, such as to reasonably adjudicate cases, also lacks the judicial temperament suitable to (b) (6) position. It has been my experience that if no one ever stands up to a bully, the bully will remain fixed in his or her ways.

I hope this letter will assist in the administration of justice.

(b) (6)

Mexican forces involved in kidnappings, disappearances, report charges

Comments 12

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38



Relatives of disappeared people protest in Monterrey, Mexico, demanding more action from authorities in combating violence. (Miguel Sierra / EPA / January 11, 2013)

By Tracy Wilkinson

February 20, 2013 | 1:00 p.m.

MEXICO CITY — State security forces in Mexico have participated in the kidnappings and disappearances of a large number of missing citizens, and the government's failure to investigate most cases only compounds the atrocity, a new human rights report alleged Wednesday.

The report by the U.S.-based Human Rights Watch presents a scathing indictment of the administration of former President Felipe Calderon, who left office Dec. 1. However, it also poses urgent challenges for his successor, Enrique Peña Nieto.

Against the backdrop of a military-led offensive on powerful drug-trafficking cartels, an estimated 70,000 people were killed during Calderon's six-year term, according to authorities and media reports. Thousands more — possibly as many as 20,000 — disappeared, never to be heard from again.

The missing represent what Human Rights Watch called a festering unknown that causes enduring anguish for the families.

Many were kidnapped by drug gangs, but all state security branches, including the military and federal and local police, are also accused of "enforced disappearances" of many victims, Human Rights Watch said. The government ignored the problem, failed to take steps to stop it and often blamed the victims, the report said.

"The result was the most severe crisis of enforced disappearances in Latin America in decades," Human Rights Watch said.

The 176-page report corroborates reporting by Human Rights Watch and stacks of complaints filed by families of the missing in almost every state of the republic.

There was no immediate comment on the report from officials with the current or former government.

"What sets these crimes apart is that, for as long as the fate of the victim remains unknown, they are ongoing," the report said. "Each day that passes is another that authorities have failed to find victims, and another day that families continue to suffer the anguish of not knowing what happened to a loved one."

WITHOUT A COUNTRY

Deportees to Mexico's Tamaulipas preyed upon by gangs

Not even a church-run shelter is safe for migrants sent back to a dangerous region of Mexico by the United States. Viewed as rich targets, the deportees are vulnerable to kidnapping — and worse.

Comments 383

Email

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567

ALSO



Photos: Mexican deportees face a dangerous future



Caught in the current of reverse migration



Trying to get back to the only life he knew



In Mexicali, a haven for broken lives



The migrants had been flown 1,500 miles to the Texas-Mexico border as part of a U.S. enforcement program aimed at making it harder for them to return. Many were deported after traffic violations or drunk driving arrests exposed their undocumented status, or after repeatedly entering the country illegally.

Now, they joined in prayer, then quietly ate dinner.

"I feel like something bad can happen at any time," said Serafin Salazar, formerly a car mechanic in El Monte.

..

By Richard Marosi, Los Angeles Times

September 25, 2012 | 6 p.m.

MATAMOROS, MEXICO — They stuck together, walking slowly on busted sidewalks, approaching corners warily. They hurried past smoky taco stands and fleabag hotels. Nobody strayed.

Deported from Southern California the night before, the 20 men had gotten a few hours of fitful sleep at the bus station of this lawless border city. Now they just wanted to get out of town.

"We were moving as one, like a ball," said Rodrigo Barragon, 35, formerly a construction worker in Los Angeles. "But when I looked back, the ball had a tail."

Five men were following them. Up ahead, three vehicles screeched to a stop, blocking their way down Avenida Washington. The migrants scattered, tearing through streets and alleyways, clutching small bags that held their belongings.

Hours later, they straggled through the door of the Diocese of Matamoros migrant shelter, beneath an image of the Virgin of Guadalupe. A plaque beside the entryway bore a dedication: "To the 72 murdered migrants and to those we know nothing about," men and women who were massacred or who simply disappeared.

Even this shelter couldn't guarantee safety: Fifteen residents were dragged away at gunpoint on Christmas Eve from the dining room where the newcomers now stood.

The men headed deeper into the compound, through an open yard surrounded by razor-wire fence, to the dormitory. There, they found a man sprawled on the floor, his legs bloodied and bruised.

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 checked="" type="checkbox"/> respondent's attorney <input type="checkbox"/> third party (e.g., relative, uninterested attorney, courtroom observer, etc.) <input type="checkbox"/> other: _____	<input 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 checked="" type="checkbox"/> letter <input type="checkbox"/> fax	<input 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 checked="" type="checkbox"/> other: Referred by CIJ O'Leary
date of complaint source	complaint source contact information
(i.e., date on letter, date of appellate body's decision) March 12, 2013 (received by OCIJ March 18, 2013) and referred to ACIJ Fong by fax 3/19/2013 referencing OCIJ Correspondence Control Sheet (b) (6)	name: _____ address: _____ email: _____ phone: _____ fax: _____
additional complaint source details	
(i.e., DHS component, media outlet, third party details, A-number)	

complaint details		
IJ name	base city	ACIJ
(b) (6)	(b) (6)	Thomas Y.K. Fong
relevant A-number(s)	date of incident	
A(b) (6)	Master Calendar June 14, 2012	
allegations		
<p>Respondent's attorney almost 9 months after the incident (and just the month before the next scheduled hearing of April 18, 2013) filed this written complaint. He asserts that IJ (b) (6) in a Master Calendar hearing "vehemently and vociferously reject[ed] my client's application for asylum out of hand." He described the IJ's conduct as "rude" and "belittle[ing]" in categorizing the appl as "frivolous." He then writes that the IJ stated an accompanying COR appl "would be denied as a penalty for bringing what (b) (6) described as a frivolous asylum claim." He went on to accuse the IJ of "acting from ignorance of the law and ignorance of the facts." He "resent(ed) (b) (6) ignorance, abuse, threats and accusations" and the "kangaroo tribunal which is abusive to the rights of respondents." Finally, he complained the judge failed to state the time of the hearing and when he requested the time, (b) (6) "rudely refused my request". He closed with stating the IJ lacked "...judicial temperament" and he need to stand up to a "bully".</p>		

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 checked="" type="checkbox"/> legal	<input type="checkbox"/> criminal
<input type="checkbox"/> incapacity	<input type="checkbox"/> other: _____				

CONFIDENTIAL MEMORANDUM

To: ACIJ Mary Beth Keller
From: ACIJ Thomas Y.K. Fong
Date: March 26 and additions entered on March 27, 2013
Re: Complaint In re (b) (6) (IJ (b) (6)), filed by Respondent's attorney (b) (6)

I. Questions Presented in the Complaint and Short Answers

- A. Did IJ (b) (6) improperly deny the respondent's asylum application because he failed to show past persecution, without evaluating whether he had a well-founded fear of future persecution?

No. This allegation is entirely false. Past persecution was not discussed or even mentioned during the hearing. IJ (b) (6) however did make statements that could be interpreted as denying or prejudging the claim before testimony was given (pre-permitting?) the respondent's asylum application because he failed to submit a declaration or provide complete answers to the questions in the Form I-589 and, as a result, (b) (6) determined that he had presented only a "general" claim which under (b) (6) Circuit law would fail.

- B. Did IJ (b) (6) improperly reject the respondent's brief, claiming that it was "frivolous" because it contained only "country conditions?"

No. IJ (b) (6) neither rejected the respondent's brief nor labeled it "frivolous." Instead, (b) (6) correctly stated that the brief of respondent's counsel was insufficient to support the respondent's asylum claim absent a completed Form I-589. As an attorney's brief is legal argument not evidence. It was error by respondent's counsel to refer to his legal brief as an Addendum of evidence. Finally, the respondent's counsel appears to have confused IJ (b) (6) required service of the *Notice of Privilege of Counsel and Consequences of Knowingly Filing a Frivolous Appl for Asylum* (aka frivolous asylum warning) as a finding of a "frivolous" claim. See 208(d)(4)(A) and (6) I&N Act and 8 CFR 1208.20.

- C. Did IJ (b) (6) improperly reject the respondent's asylum claim as "frivolous" without a hearing?

Yes and No. IJ (b) (6) did not reject the respondent's asylum claim as "frivolous" as noted in evaluation of Question B above. However, IJ (b) (6) made statements on the DAR record that could be interpreted as pretermitted respondent's claim based on his failure to submit a supporting declaration and presenting what (b) (6) viewed as only generalized country conditions on the I-589. However, because the respondent's Form I-589 set forth the outline of an asylum claim, IJ (b) (6) should have instead used wording advising that a supplement of the record like a declaration and/or subsequent testimony by respondent at a hearing on the merits must present testimony to prove the claim. See Matter of Mogharrabi, 19 I&N

Dec 439 (BIA 1987), citing INS v. Cardoza-Fonseca, 480 US 421 (1987) (stating that an alien's testimony may be sufficient to prove persecution where the testimony is "believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis for his fear.)"

- D. Did IJ (b) (6) inform Attorney (b) (6) that his client's application for cancellation of removal (COR) would be denied as a penalty for the respondent's filing of a frivolous asylum claim?

No. This allegation is utterly without merit. IJ (b) (6) reset the respondent's proceedings for a hearing on the merits (to April 18, 2013) on his cancellation application and informed Attorney (b) (6) to file all supplemental documents at least one month prior to the hearing. There was no denial or threat to deny the respondent's cancellation application.

- E. Did IJ (b) (6) fail to provide Attorney (b) (6) with the date of the next hearing and, when (b) (6) requested this information, merely inform him to look at the hearing notice?

No. IJ (b) (6) informed both parties of the next hearing date and when (b) (6) (b) (6) asked for clarification of the year; IJ (b) (6) provided it to him.

- F. Did IJ (b) (6) use an inappropriate or rude tone during the hearing, or engage in any sort of bullying?

No. This claim is entirely false. IJ (b) (6) tone was civil throughout the hearing. (b) (6) did not cut off Attorney (b) (6) or raise (b) (6) voice at any point.

II. Background

On June 14, 2012, the respondent, represented by Attorney (b) (6) appeared in a Master Calendar first time removal hearing before IJ (b) (6). The respondent submitted a Form I-589, *Application for Asylum and for Withholding of Removal*, and an accompanying brief from counsel, but labeled it as an 'Addendum,' discussing country conditions in Mexico. Attorney (b) (6) confirmed that the respondent was ready to proceed on the merits of his asylum and cancellation applications, and the parties chose a date for that hearing.

After receiving the respondent's asylum application, IJ (b) (6) provided the respondent with the frivolous asylum warning as required by statute and regulation. (b) (6) noted that his application was a "bit of a bare-bones application." (b) (6) stated that the respondent's claim appeared to be based on "general country conditions," which were "not grounds for asylum" in and of itself. IJ (b) (6) further stated, "I don't see any claim. I see two boxes checked, membership in a particular social group and Torture Convention....Where's anything relating to the respondent other than what appears to be a brief attached asserting generalized violence in Mexico?" (b) (6) replied that the respondent had a family member who had been harmed in Mexico, and IJ (b) (6) asked "Well, where is it in his application...it appears it's not in his application and that's the problem. In other words, I could deny it today and we'd be done with it." This statement

is not accurate as the Form I-589's typed answers do state that a nephew was kidnapped upon return to Mexico and he feared the same for himself and family. See written responses to Questions in Part B, pages 5 & 6. But after confirming that the respondent did not have an attached declaration, IJ (b) (6) stated, "No he doesn't, he doesn't even have a claim. So as I said, deny it today and be done with it. But we will set it over for a hearing because there is a cancellation application."

The hearing lasted approximately six minutes and there is no indication that the IJ ever went off the record at any time.

III. Detailed Analysis

As noted in the "Questions and Short Answers" section, many of the allegations made by Attorney (b) (6) appear to be entirely fabricated. The only allegation with some merit is the language noted above made by IJ (b) (6) that could have been understood as a denial, if not intent to deny his asylum application.

The record shows that the respondent provided only minimal responses to the questions posed in the I-589, albeit complete responses to the questions asked in the form regarding his asylum claim.¹ He did not provide a declaration. The 'addendum' referenced in his Form I-589 is as IJ (b) (6) noted a brief submitted by Attorney (b) (6) indicating that the respondent fears harm as a returning Mexican from the United States and refers to information regarding country conditions. The addendum is not signed by the respondent nor does it contain an declaration, affidavit or any similar document by the respondent. As a result, IJ (b) (6) determined that the respondent had not yet presented sufficient evidence for a successful asylum claim.

But given that the information provided by the respondent in the Form I-589, while minimal, it does set forth at least the general outline of his asylum claim, further there is no requirement in the regulations, statute, or case law that requires an applicant to provide a separate declaration. An IJ in this particular case must provide the respondent with a hearing on the merits of his asylum application despite the sparseness of the application itself. This is particularly true given the Board's decision in Matter of Mogharrabi, supra that an applicant's testimony, without corroborating evidence, may be sufficient to establish his asylum claim. Moreover, even though it appears that the respondent seeks asylum as a returning Mexican from the United States – a classification which was rejected by the Ninth Circuit in Delgado-Ortiz v. Holder, 600 F.3d 1148, 1152

¹ In response to Question 1A, 'Have you [or your family] ever experienced harm or mistreatment or threats in the past by anyone?' the respondent answered affirmatively, but merely wrote that **"Persons returning from America or having relatives in America more likely to be targets and extortion with government complicity. My nephew, (b) (6) was deported from the United States and subsequently kidnapped in Mexico for ransom."** In response to Question 1B, 'Do you fear harm or mistreatment if you return to your home country?' the respondent again answered affirmatively, but wrote only that **"Myself or minor children will be kidnapped and held for ransom."** In response to Question 4, 'Are you afraid of being subjected to torture in your home country or any other country to which you may be returned?' the respondent answered negatively, but then wrote **"Victims kidnapped subject to imprisonment in inhumane conditions, privation, and having limbs amputated with government complicity. It will be done by narcotics and crime gangs with government complicity. See attached addendum."** Finally, in response to Question 5, 'Explain why you did not file within the first year after you arrived,' the respondent wrote **"Because the drug war began in December 2006 and has escalated every year since. Kidnapping increased in the past year. See attached addendum."**

(9th Cir. 2010) – he is still entitled to a hearing on the merits of his asylum and withholding claims and an evaluation of his requests for protection under the CAT. Finally, the liberal leanings of the (b) (6) Circuit Court of Appeals, where this case resides, also favors giving the respondent the opportunity to present at the minimum is testimony under oath that may or may not ultimately prove his claim. In this ACIJ's view of the facts of this case, to do anything less invites a remand by the BIA and/or the (b) (6) Circuit.

Furthermore, even if IJ (b) (6) did determine that the respondent had submitted an incomplete asylum application, the appropriate course of action would have been to return the asylum application to the respondent and allow him the opportunity to resubmit the Form I-589 with the additional information included, rather than to accept the application and subsequently deny it. See 8 C.F.R. § 1208.3(c)(3).²

IV. Meeting Held with IJ (b) (6) on March 27

IJ (b) (6) denied any and all assertions made by the complaining attorney. (b) (6) stated (b) (6) was "personally offended" by his false accusations and said (b) (6) was considering recusing (b) (6) from any of his cases. I cautioned (b) (6) about recusing (b) (6) merely because an attorney filed a complaint --- as this could only encourage the complainant and even others to do the same in the future in the belief they could get (b) (6) to remove (b) (6) from their cases by simple filing a complaint against (b) (6).

I further stated that I had reviewed the ROP and the DAR and found none of his assertions of IJ misconduct supported by the DAR record. However, I noted the DAR record review evidenced words (b) (6) used that could certainly be interpreted by a party that (b) (6) had pretermitted the asylum persecution claim. Although (b) (6) stated (b) (6) had reviewed the DAR record, (b) (6) still asserted (b) (6) had not done so and had "never" done so in any cases (b) (6) presided over. Nevertheless, whether (b) (6) did or did not intend to do so, (b) (6) made statements on the record that were interpreted by the respondent's counsel that (b) (6) had pretermitted or was going to deny the various asylum claims before any testimony was given. See IJ (b) (6)'s statements quoted in the above section II. Background.

I specifically asked what (b) (6) intended to do at the next scheduled hearing, and (b) (6) stated it was always (b) (6) intent to hear both the various persecution and COR claims on their merits. (b) (6) reiterated that (b) (6) had "always" planned to give respondent and counsel the opportunity to present the persecution claims although questioning that the submission to date showed only "general country conditions".

V. Conclusion

In sum, it would have been better practice for Attorney (b) (6) to have filed a declaration with the respondent's I-589 application, but it is not uncommon that a declaration from respondents is not provided. He further confuses a legal brief or as he couched it, as an "addendum" as evidence. He then compounded this error by failing to

² Although this regulation addresses asylum applications filed with USCIS, there is no indication in either the regulations or case law that a similar rule would not apply to applications filed with the Immigration Court.

request a continuance to file a declaration when it was noted as absent by the IJ; and now makes a belated complaint consisting of mostly baseless allegations against IJ (b) (6) just a few weeks before the next hearing. Is this a thinly veiled attempt to get a delay, prep an appeal, to have the IJ recused or get (b) (6) to remove (b) (6) The DAR flatly contradicts all but one of his allegations. Nonetheless, IJ (b) (6) should have worded (b) (6) concerns more precisely to avoid counsel's belief that (b) (6) had pretermitted or planned to pretermitt his client's persecution claims without a hearing.

Response Letter to Complainant:

U.S. Department of Justice

Executive Office for Immigration Review

Immigration Court

Thomas Y. K. Fong
Asst. Chief Immigration Judge

606 S. Olive Street, 15th Floor
Los Angeles, California 90014

April 8, 2013

(b) (6)

In re: Complaint filed in the (b) (6) (IJ (b) (6)

Dear (b) (6)

This letter is in response to your written complaint on the above matter, dated March 12, 2013, which was referred by the Chief Immigration Judge to me as Immigration Judge (IJ) (b) (6) supervisory judge. I reviewed the entire written Record of Proceeding (ROP) and carefully listened to the just six minutes of the Digital Audio Recording (DAR) of the Master Calendar hearing of June 14, 2012 that you referenced in your letter. I then synthesized your complaint into six (6) asserted allegations of IJ error and/or misconduct.

Background

On June 14, 2012, the respondent, represented by Attorney (b) (6) appeared in a Master Calendar first time removal hearing before IJ (b) (6). The respondent submitted a Form I-589, *Application for Asylum and for Withholding of Removal*, and an accompanying legal brief by counsel, labeled as an 'addendum' which discussed country conditions in Mexico. Attorney (b) (6) confirmed that the respondent was ready to proceed on the merits of both his asylum and separate cancellation applications. The parties chose a date ten (10) months later to the following year's date of April 18, 2013 for that presentation.

After receiving the respondent's asylum application, IJ (b) (6) provided the respondent with the frivolous asylum warning as required by statute and regulation. (b) (6) noted that his application was a "bit of a bare-bones application" and there was some limited discussion of the contents of the persecution claim being asserted. But after confirming that the respondent did not have an attached declaration to his application, the

matter was set over for a merits hearing. The hearing lasted approximately six minutes and there is no indication that the IJ ever went off the record at any time.

Complaint Allegations

You first asserted that Judge (b) (6) improperly denied the respondent's asylum application because he failed to show past persecution, and that (b) (6) did so without evaluating whether he had a well-founded fear of future persecution. My review of the DAR evidences that past persecution was not discussed or even mentioned during this short hearing. This allegation is not supported by the record.

Your second claim is that IJ (b) (6) improperly rejected the respondent's brief, claiming that it was "frivolous". The record discloses that the judge neither rejected your brief nor did (b) (6) label it "frivolous". Instead, (b) (6) correctly stated that your counsel brief was insufficient to support the respondent's asylum claim. As an attorney's brief is legal argument not evidence, it was error on your part to refer to your brief as an addendum of evidence. Finally, you appear to have confused IJ (b) (6) required service of the *Notice of Privilege of Counsel and Consequences of Knowingly Filing a Frivolous Application for Asylum* (aka frivolous asylum warning) form as a finding of a "frivolous" claim. See 208(d)(4)(A) and (6) of the I&N Act; and 8 CFR 1208.20. This allegation is not supported by the record.

The third assertion you make is that Judge (b) (6) stated that your client's application for cancellation of removal (COR) would be denied as a penalty for the respondent's filing of a frivolous asylum claim. The judge reset the respondent's proceedings for a hearing on the merits to April 18, 2013 on this application and informed you to file all supplemental documents at least one month prior to the hearing. There was no denial or threat to deny the respondent's cancellation application. This allegation is utterly without merit.

The fourth allegation of misconduct you make asserts that the judge failed to provide you with the date of the next hearing and, when you requested this information, she merely informed you in a rude manner to look at the served written hearing notice. The DAR evidences that IJ (b) (6) informed both parties of the next hearing date and when you asked for clarification of the year. IJ (b) (6) provided it to you. This allegation is refuted by the recorded record.

Your next or fifth complaint states that IJ (b) (6) used inappropriate or rude tones during this June 2012 hearing, and engaged in bullying. I found IJ (b) (6) tone to be civil throughout the hearing. (b) (6) did not cut you off or raise (b) (6) voice at any point. This claim is entirely false.

Finally, you asserted that Judge (b) (6) improperly rejected your client's asylum claim as "frivolous" without a hearing. Again, my review of the oral record (DAR) does not evidence IJ (b) (6) ever stating that the respondent's asylum claim was "frivolous". However, IJ (b) (6) may have made statements on the record that you interpreted as premitting your client's claim, but upon subsequent discussion of your complaint with (b) (6) (b) (6) assured me that (b) (6) was planning on providing respondent and you a full

opportunity to present both the asylum persecution and cancellation applications at the scheduled hearing of April 18.

Conclusion

In sum, I do not find that your allegations of judge misconduct to have any substantial merit. I do note that it would certainly have been better evidentiary practice for you to have assisted your client in providing a more factually detailed Form I-589 application. Also helping him prepare and file a sworn declaration or affidavit explaining in his own words his asserted grounds and well-founded fear of persecution, although not a requirement to filing an asylum application, would go far to assist in explaining his claim. Further, submitting your legal brief and describing it as an addendum of evidence only confuses the record. Finally, I question why you would take so long to file this complaint (almost nine (9) months after the alleged misconduct by the IJ) and just a few weeks before the scheduled merits hearing.

Sincerely,

Thomas Y.K. Fong
Asst. Chief Immigration Judge

TYKF/sk