



Detail

Complaint Number: 736

Immigration Judge: (b)(6)

Complaint Received Date: 03/25/13

Current ACIJ
Santoro, Christopher A.
Past ACIJS:

Base City
(b)(6)

Status
CLOSED

Final Action
Oral counseling

Final Action Date
04/03/13

A-Numbers(s)	Complaint Nature(s)	Complaint Source(s)
(b)(6)	Legal	BIA

Complaint Narrative: IJ made inconsistent credibility findings, ordered withholding of removal to China because the court was "soft" then ordered removal to a different country to find out who the R really was, and likened it to a "compromise verdict." Case had to be remanded to a different IJ for reconsideration.

Complaint History

03/25/13	Complaint referred to ACIJ
04/03/13	Oral counseling
04/05/13	Database entry created

Sep 11, 2013

1 of 1

Memorandum



Subject	Date
(b) (6) (BIA March 27, 2013)	March 28, 2013

To	From
Brian O'Leary, Chief Immigration Judge	David L. Neal, Chairman
MaryBeth Keller, Assistant Chief Immigration Judge	

Pursuant to a previous understanding that the Board would bring to the attention of the Chief Immigration Judge any Board decision which remands a case to a different Immigration Judge, you will find attached a copy of the Board's decision dated March 27, 2013, and relevant portions of the record of proceedings, in the above-referenced matter. Please take the necessary steps to ensure that this matter is assigned to a different Immigration Judge on remand.

Further, the Board anticipates returning the record of proceedings for this remanded case to the Immigration Court in one week. If you wish to review the record prior to its return to the Immigration Court, please contact Suzette Henderson.

Thank you for your attention to this matter.

Attachments



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

*5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041*

(b) (6)

DHS/ICE Office of Chief Counsel - (b)(6) & (b)(7)(C)
(b)(6) & (b)(7)(C)

Name: (b) (6)

A: (b) (6)

Date of this notice: 3/27/2013

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Liebowitz, Ellen C
Mullane, Hugh G.
Creppy, Michael J.

yungc
User team: Docket



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

(b) (6)

DHS/ICE Office of Chief Counsel (b)(6) & (b)(7)(C)
(b)(6) & (b)(7)(C)

Name: (b) (6)

A(b) (6)

Date of this notice: 3/27/2013

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Liebowitz, Ellen C
Mullane, Hugh G.
Creppy, Michael J.

vungc

User team: Docket

Falls Church, Virginia 22041

File: A(b) (6)

Date:

MAR 27 2013

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: (b) (6) Esquire

ON BEHALF OF DHS: (b)(6) & (b)(7)(C)
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

In a decision dated December 30, 2010, an Immigration Judge denied the respondent's request for asylum in the exercise of discretion, and granted him withholding of removal. *See* sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3). The respondent and the Department of Homeland Security (DHS) have filed appeals. The record will be remanded to a different Immigration Judge for further proceedings and the entry of a new decision.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion, under a *de novo* standard. 8 C.F.R. § 1003.1(d)(3)(ii). As the respondent's asylum application was filed after May 11, 2005, it is governed by the provisions of the REAL ID Act. *Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006).

The respondent is a native and citizen of the People's Republic of China (Exh. 1). He seeks asylum and related relief and protection because he is Roman Catholic. We will vacate the decision of the Immigration Judge for the following reasons. The Immigration Judge stated the respondent was credible, but also found aspects of his testimony "extremely implausible," that he produced fake documents, and that he did not establish his identity (*see* I.J. at 4-7; *see also* Tr. at 151). The Immigration Judge's credibility findings are internally inconsistent, and do not reflect proper consideration of the REAL ID Act, which requires that credibility be assessed based on the "totality of the circumstances, and all relevant factors." Section 208(b)(1)(B)(iii) of the Act. We will therefore remand the record for a new evaluation of credibility. *See also Matter of J-Y-C-*, 24 I&N Dec. 260 (BIA 2007).

In addition, the Immigration Judge's decision to grant the respondent withholding of removal from China is not adequately reasoned. The Immigration Judge made no finding of past persecution, and stated that it was "difficult to say" whether the respondent was actually persecuted as a Christian in China. I.J. at 8. The Immigration Judge also did not make any finding that it is more likely than not that the respondent's life or freedom will be threatened in the future if returned to China. *See* 8 C.F.R. § 1208.16(b). Rather, the Immigration Judge stated

(b) (6)

that the respondent's identity was not established and that the court was perhaps getting "too soft, but I am reluctant to return the respondent to China, whoever he is." (I.J. at 8-9). (b) (6) then granted withholding of removal. (b) (6) explained that (b) (6) decision was along the lines of a "compromise verdict." The Immigration Judge ordered the respondent removed to Belize as a means to check his identity (I.J. at 9; *see also* I.J. at 7).¹ (b) (6) determination does not comport with the requirements for designating a country of removal. *See* section 241(b)(2) of the Act.

Under these circumstances, we will remand the record for further proceedings and the entry of a new decision. On remand, both parties should have the opportunity to update the evidentiary record and present arguments. The Immigration Judge should then render a new decision, which includes an explicit credibility determination and an evaluation of the respondent's applications for relief and protection under the appropriate legal standards. The Immigration Judge should also address any other issues necessary for the proper resolution of this case, including which country is appropriate to designate for removal. The following orders will be entered.

ORDER: The December 30, 2010, decision of the Immigration Judge is vacated.

FURTHER ORDER: The record is remanded to a different Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.


FOR THE BOARD

¹ (b) (6) specifically ordered the respondent deported to "Belize or any other country that will accept him, other than China." I.J. at 9.

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT

(b) (6)

File A (b) (6)

December 30, 2010

In the Matter of

(b) (6)

Respondent

)
)
)
)

IN REMOVAL PROCEEDINGS

CHARGE: Section 212(a)(6)(A)(I) of the INA present without inspection.

APPLICATION: Asylum, withholding of removal, Convention Against Torture relief.

ON BEHALF OF THE RESPONDENT:

ON BEHALF OF THE DEPARTMENT
OF HOMELAND SECURITY:

(b) (6) Esquire

(b)(6) & (b)(7)(C) Esquire
(b)(6) & (b)(7)(C) Esquire

DECISION OF THE IMMIGRATION JUDGE

Respondent is a 28-year-old male, native and citizen of China who claims he entered the United States August 14, 2007. He has admitted through counsel that he was not admitted or paroled after inspection, and has conceded removability as charged.

Respondent's application is based on religion. Now, he claims that he came from a Roman Catholic family in China, that his parents had been Catholic for a number of years. The church

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met at various people's homes. He indicated that his parents did have some problems, that his mother was persecuted and died as a result of the persecution in 1998, although her death certificate merely indicates death of an illness. Not necessarily a contradiction in China. In any event, respondent was worshipping at a house church on June 10, 2007, with about five people when the police raided it. He and (b) (6) were arrested and beaten. He was threatened with re-education camp. He eventually signed a written pledge to refrain from religion and was released. As soon as he was released, he was fired from his job at the real estate company where he worked.

As a result of this incident, respondent decided to try to leave China. Obviously he took advantage of the service of a smuggler, known as a snakehead in China. He testified that he used a passport in the name of (b) (6) to travel from China proper to Hong Kong in July of 2007. And he was taken along the usual smuggling route, eventually to Mexico, and there he was hidden in a vehicle, crossing the border into California. When he arrived in the United States, he contacted his friend (b) (6) and met (b) (6) in (b) (6) on August 20, 2007.

Respondent lived in (b) (6) initially. He currently resides in (b) (6), specifically in (b) (6) where he works at the China Super Buffet restaurant. His wife, who he married in 2008, apparently worked there too until she became pregnant. They currently have two children, one just a

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month old, and the other about a year and a half old.

Although respondent testified that he attended a Catholic church in (b) (6) it does not appear likely that he attends very often. He is not very familiar with the name of the church or the area, and in fact, the church does not have a Chinese service, so he does not really know what is going on when he attends. That is not necessarily inconsistent with his claim to be Catholic. Obviously people move around the country to different places where they can get better jobs in the hopes of building a better life. The Court, I think, can take administrative notice that there probably are not a lot of Catholic churches in rural (b) (6). He may have to go to (b) (6) which is actually close to (b) (6) to find a Catholic church. (b) (6) pointed out that there are some Catholic churches, but that does not mean the respondent knew about them. In any event, if he works the standard hours of a Chinese buffet, he probably has very little time to go to church, even if one was nearby.

When respondent's wife becomes pregnant, she moves to (b) (6) and stays with somebody else because people there speak Chinese and their boss will not allow her to have a room if she is not working. Not a very good employer. Apparently she plans to return to Tennessee shortly now that their second baby has been born.

The Court's basic analysis of respondent's testimony is

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that he seemed forthright and credible. I disagree with the Trial Attorney, (b) (6) and I think the respondent's knowledge of Catholicism was actually fairly good as these Chinese cases go. He certainly knows something about it. And his story is, otherwise, the usual story we hear. Underground church raided by police, has to leave to practice his religion.

(b) (6) the most recent Trial Attorney, argues that things vary in China. Some churches are left relatively unmolested, when others are bothered. But I do not believe it is true that the government of China always leave churches alone. There is plenty of evidence in the record that churches are raided, a lot depends on the attitude of the officials in the area.

Based on the foregoing, I would certainly believe respondent's story and grant the case because I am cognizant of the fact that Chinese people come from a Communist society, which is extremely hostile to religion, at best, and persecutory, at worst. And basically I grant most Chinese cases.

There is another factor to this case, which leads in a different direction.

The asylum office, using the NIIS print-out identified respondent by name and date of birth with a person of the same name, who is a citizen of Belize, and transited (b) (6) in 2002. Although China is a country of a billion people, and there are not that many last names, nonetheless the fact is, very few

A (b) (6)

December 30, 2010

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Chinese travel internationally, and it is extremely implausible that someone named (b) (6) born on the same day as respondent, is a different person. So, that is disconcerting. Perhaps the Court could overlook that if it were not for respondent's ID card. His ID card, which he testified he got personally from the police in his district, used only once to get a job, and then gave to his father, and it was in his father's possession while respondent came to the United States (and corroborated by the father who said exactly the same in a letter), was his real national ID card.

However, this is clearly a very poor counterfeit. Even the Asylum Officer who is presumably not a forensic document examiner, although he probably has seen an awful lot of Chinese identity cards, recognized that there was something wrong with it.

Now, we had testimony from a document examiner from the Forensic Document Laboratory, (b) (6). Although respondent's counsel attempted to attack his credibility, it appears to the Court that (b) (6) is an extremely competent and knowledgeable document examiner, and I saw no holes whatsoever in his testimony. He did not attempt to overplay his hand by claiming any expertise that he does not have, or any knowledge that he could not have. Based on his testimony, I am convinced to a moral certainty that respondent's national identity card is counterfeit, and not a very good counterfeit at

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that. I will not go into all of the details of (b) (6) testimony, but there were plenty of details. The problems that (b) (6) detected in this national identity card cannot possibly be explained by poor manufacturing, or sloppy preparation. He is talking about clear counterfeit that this was not a professionally manufactured card at all. It was probably done on a personal computer, with technology that would not have been used on the real ID cards. Counsel tried to argue that (b) (6) (b) (6) had not seen enough cards to truly know as he stated the universe of cards, but in fact the Forensic Document Laboratory knows exactly what it is doing. It is the premiere document examining organization in the world. It is used by the FBI. It is used by international organizations. It is used by the State Department. They know what they are doing. The Forensic Document Laboratory gathers exemplars, original valid documents from different countries, and compares questioned documents to the real ones. (b) (6) testified in tremendous detail as to the different tests he made, the different devices he used, and there is no question in the Court's mind that this is a false document.

There is no plausible explanation for respondent to possess this document in anything other than a fraudulent manner. There is no way the police issued him this document. The only way the Court can conceive the respondent could have gotten this document innocently would be if he contacted his father and said,

A (b) (6)

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dad, I need my national ID card for my asylum case, and the father did not have it or had lost it, and went to a smuggler or a document forger to make a new one. However, respondent has denied that scenario. His father has denied that scenario. And the remaining scenarios are just not plausible. So respondent clearly has this document and knows that this document is fraudulent. As Trial Attorney (b) (6) stated, we cannot get inside of respondent's mind, but we do not need to. He obviously knows that this is not a real document.

The question then arises, is respondent the (b) (6) who transited to (b) (6) in 2002, and is a citizen of Belize. He could be. Although I think that he probably is not. Some how or the other when he decided to create a false identity, he happened upon that one. Perhaps the smuggler had access to the other, or the real (b) (6) passport or some other document, and his identity was created from that. The only way to determine if respondent really is the (b) (6) who is a citizen of Belize is to present him for removal to Belize, and if he really is from there, that country will accept him. And if he really is not, then they will reject him.

Counsel for respondent argues that respondent has many other identity documents, and he does. However, every one of them, without exception, is possessed of far less security features than the national ID card. If one can get a fake national ID card, one can certainly fake all of these other

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documents. The evidence from the police station in Fujian Province is probably meaningless. There is no reason to believe that they would provide such a statement. Certainly, they could not have looked at the original document, only a copy, when they compared it, so they would not really know if it was an original or not. And, at most, they compared it to their actual documents. Perhaps there was a (b) (6) the real (b) (6) who was born at that time, had been issued an identity card with that same name. Obviously, I am speculating, but that is what one has to do when the facts are extremely unclear. However, the point is, his other identity document is unveiling, as are, for example, the affidavit from his father, who may have been party to the fraud, and the other documents in the case. Therefore, I believe that respondent is not (b) (6) that he is somebody else. We will never know who.

Then there arises the question of whether, whoever respondent actually is, was persecuted as a Christian. Once again, it is difficult to say. All the Court can observe is that he seems to be knowledgeable about Christianity, he seemed to be forthright regarding his story. Admittedly, his story is exceptionally common. We hear the same story, really in every Christian case. That the person was in a small group and it was raided and he was arrested. Perhaps the Court is getting too soft, but I am reluctant to return respondent to China, whoever he is.

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Therefore, the Court is going to deny asylum as respondent has failed to prove his identity, and in the exercise of discretion for his fraud.

The Court will grant withholding of removal to China, to protect him from returning to China, and order his removal to Belize because that is the only way we can find out if he is, in fact, that (b) (6). It seems like a strange decision, but in a way it is a compromised verdict, I suppose.

ORDER

The Court's orders are as follows.

(1) I find respondent inadmissible and removable under Section 212(a)(6)(A)(I) of the Act.

(2) The application for asylum is denied for the reasons above stated.

(3) Withholding of removal will be granted to China. .

(4) I order respondent removed to Belize or any other country that will accept him, other than China.

December 30, 2010

(b) (6)
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding
before (b) (6) in the matter of:

(b) (6)

A (b) (6)

(b) (6)

was held as herein appears, and that this is the original
transcript thereof for the file of the Executive Office for
Immigration Review.

Tujana T. Tull
Tujana T. Tull (Transcriber)

Deposition Services, Inc.
12321 Middlebrook Road, Suite 210
Germantown, Maryland 20874
(301) 881-3344

February 17, 2011
(Completion Date)

EOIR FOIA Processing (EOIR)

From: Minton, Amy (EOIR)
Sent: Thursday, March 28, 2013 11:30 AM
To: O'Leary, Brian (EOIR); Keller, Mary Beth (EOIR)
Cc: Minton, Amy (EOIR); Weil, Jack (EOIR); Moutinho, Deborah (EOIR); Henderson, Suzette M. (EOIR)
Subject: IJC Memo -(b) (6) (BIA 3/27/13)
Attachments: (b) (6) memo (b) (6).pdf

Please see the attached IJC Memo from Chairman David L. Neal. Thank you.

EOIR FOIA Processing (EOIR)

From: O'Leary, Brian (EOIR)
Sent: Thursday, March 28, 2013 12:22 PM
To: Keller, Mary Beth (EOIR)
Subject: FW: IJC Memo - (b) (6) (BIA 3/27/13)
Attachments: (b) (6) memo (b) (6).pdf

This is a (b) (6) case. Since Judge (b) (6) is now in (b) (6) remand to a different judge is not problematic.

From: Minton, Amy (EOIR)
Sent: Thursday, March 28, 2013 11:30 AM
To: O'Leary, Brian (EOIR); Keller, Mary Beth (EOIR)
Cc: Minton, Amy (EOIR); Weil, Jack (EOIR); Moutinho, Deborah (EOIR); Henderson, Suzette M. (EOIR)
Subject: IJC Memo - (b) (6) (BIA 3/27/13)

Please see the attached IJC Memo from Chairman David L. Neal. Thank you.

Moutinho, Deborah (EOIR)

From: Santoro, Christopher A (EOIR)
Sent: Wednesday, April 03, 2013 9:10 AM
To: Moutinho, Deborah (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: IJC #2 -(b) (6)
Attachments: IJC -(b) (6).doc

Deborah,

Attached is an IJC intake form for a Judge (b) (6) referral. The e-mail below is the written counseling. Thanks.

Christopher A. Santoro
Assistant Chief Immigration Judge

From: Santoro, Christopher A (EOIR)
Sent: Wednesday, April 03, 2013 9:09 AM
To: (b) (6) (EOIR)
Subject: (b) (6)

Judge (b) (6)

The BIA referred the above-captioned matter to OCIJ for review. This is a Chinese asylum case you heard in 2010 when (b) (6). In your oral decision, you found the respondent "forthright and credible." Later, however, you found that the respondent had not established his identity and that he lied about how he obtained a national ID card. You further questioned his testimony about whether he had transited Belize as some documentary evidence suggested. At the conclusion of your decision, you stated, "[p]erhaps the Court is getting too soft, but I am reluctant to return respondent to China, whoever he is. . . . The Court will grant withholding of removal to China, to protect him from returning to China, and order his removal to Belize because that is the only way we can find out if he is, in fact, that (b) (6). It seems like a strange decision, but in a way it is a compromise verdict, I suppose."

As the Board noted when remanding this case to a different IJ for reconsideration, the language quoted above raises questions about whether you were confused about the applicable law, the scope of an IJ's authority to designate a country for removal, and your use of the phrase "compromise verdict."

I know you and I know you have no confusion about the law. The sense I got from listening to the hearing and reading the decision (including a portion on page 8 where you speculate about various theories because "the facts are extremely unclear") is that it is the "editorializing," for lack of a better word, that resulted in the Board's referral. I think they were also understandably concerned about the appearance of a judge knowing what the law required, yet making a contrary decision simply because the judge was "soft" or wanted to issue a "compromise verdict."

I know we've had quick succession of three cases in the last few weeks that were referred to us because of what I call editorializing from the bench. When we spoke about the (b) (6) case you said you'd give renewed thought to how you articulate your rulings and I know that this case and yesterday's both predate that discussion, so I offer my thoughts about this one as food for thought along those same lines.

Chris

Christopher A. Santoro
Assistant Chief Immigration Judge

Immigration Judge Complaint Intake Form

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

Date Received at OCIJ: 3/28/13

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)	complaint source contact information
3/28/13	name: BIA address: _____ _____ _____ email: _____ phone: _____ fax: _____
additional complaint source details (i.e., DHS component, media outlet, third party details, A-number)	
(b) (6)	

IJ name	base city	ACIJ
(b) (6)		Santoro
relevant A-number(s)	date of incident	
(b) (6)	12/30/2010	
allegations		
IJ made inherently inconsistent credibility findings, ordered withholding of removal to China because the court was "soft," then ordered removal to a different country to find out who the respondent really was, and likened it to a "compromise verdict." Case had to be remanded to different IJ for reconsideration.		
nature of complaint		
<input 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 checked="" type="checkbox"/> legal <input type="checkbox"/> criminal

