



Detail

Complaint Number: 779

Immigration Judge: (b)(6)

Complaint Received Date: 07/10/13

Current ACIJ
Nadkarni, Deepali

Base City
(b) (6)

Status
CLOSED

Final Action
Complaint dismissed as
frivolous

Final Action Date
07/18/13

Past ACJIS:

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

Complaint Narrative: Failure to provide R opportunity to file application for relief

Complaint History

07/18/13 Complaint dismissed as frivolous
07/19/13 Database entry created

Sep 11, 2013

1 of 1



Memorandum

Subject	Date
(b) (6) (BIA July 8, 2013)	July 10, 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 July 8, 2013, and relevant portions of the record in the above-referenced matter.

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

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

Falls Church, Virginia 22041

File: A(b) (6)

Date: JUL - 8 2012

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

The respondent, a native and citizen of Mexico, appeals the decision of the Immigration Judge, dated June 11, 2012, ordering him to voluntarily depart the United States. The Department of Homeland Security is opposed to the respondent's appeal. The respondent is subject to removal from the United States because he is an alien who is present in this country without being admitted or paroled or who arrived at any time or place other than as designated by the Attorney General (I.J. at 1-2; Exh. 1; Tr. at 3). See section 212(a)(6)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(6)(A)(i).

We disagree with the Immigration Judge's holding that the respondent has abandoned his opportunity to file an Application for Asylum and for Withholding of Removal (Form I-589). When the respondent appeared at the removal hearing on November 14, 2011, the Immigration Judge did not set any filing deadlines (Tr. at 3-4). Thus, this is not a case where it is proper to deem an alien's application abandoned under the provisions of 8 C.F.R. § 1003.31(c). Moreover, this Board's intervening decision in *Matter of C-B-*, 25 I&N Dec. 888 (BIA 2012), holds that, if an alien expresses a fear of persecution or harm in a country to which he might be removed, the regulations require the Immigration Judge to advise the alien of his ability apply for asylum or withholding of removal (including protection under the Convention Against Torture) and make the appropriate application forms available.

We express no opinion regarding the ultimate outcome of these removal proceedings at the present time. See *Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996). Even though the basis of this remand order is to specifically provide the respondent with an opportunity to file a Form I-589, the parties are not precluded from raising other issues in remanded proceedings. We observe that the respondent has presented evidence that he has already posted a \$500 voluntary departure bond. The following order is entered.

ORDER: The respondent's appeal is sustained and the record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.


FOR THE BOARD

IMMIGRATION COURT

(b) (6)

In the Matter of

Case No.: (b) (6)

(b) (6)

Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on June 11, 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 MEXICO or in the alternative to .~~

[] Respondent's application for voluntary departure was denied and respondent was ordered removed to MEXICO or in the alternative to .

☒ Respondent's application for voluntary departure was granted until July 11, 2012 upon posting a bond in the amount of \$ 500 with an alternate order of removal to MEXICO.

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.

[] Respondent is admitted to the U.S.

[] As a condition of admission, respondent is required to

[] Respondent knowingly filed a false statement or document, or notice.

☒ Respondent was advised of the legal consequences of failure to appear as ordered in

[] Proceedings were terminated.

[] Other: _____

Date: Jun 11, 2012

Appeal: Waived/Reserved Appeal

July 11, 2012

NOTICE TO RESPONDENTS GRANTED VOLUNTARY DEPARTURE

You have been granted the privilege of voluntarily departing from the United States of America. The Court advises you that, if you fail to voluntarily depart the United States within the time period specified, a removal order will automatically be entered against you. Pursuant to section 240B(d) of the Immigration and Nationality Act, you will also be subject to the following penalties:

1. You will be subject to a civil penalty of not less than \$1,000 and not more than \$5,000; and
2. You will be ineligible, for a period of 10 years, to receive cancellation of removal, adjustment of status, registry, voluntary departure, or a change of non-immigrant status.

The Court further advises you that:

☐ **You have been granted pre-conclusion voluntary departure.**

1. If you file motion to reopen or reconsider during the voluntary departure period, the grant of voluntary departure will be terminated automatically, the alternate order of removal will take effect immediately, and the penalties for failure to depart voluntarily under section 240B(d) of the Act will not apply. 8 C.F.R. § 1240.26(b)(3)(iii).
2. There is a civil monetary penalty if you fail to depart within the voluntary departure period. In accordance with the regulation, the Court has set the presumptive amount of \$3,000 (or _____ instead of the presumptive amount.) 8 C.F.R. § 1240.26(j).

☒ **You have been granted post-conclusion voluntary departure.**

1. If the Court set any additional conditions, you were advised of them, and were given an opportunity to accept or decline them. As you have accepted them, you must comply with the additional. 8 C.F.R. § 1240.26(c)(3).
2. The Court set a specific bond amount. You were advised of the bond amount, and were given an opportunity to accept or decline it. As you have accepted it, you have a duty to post that bond with the Department of Homeland Security, Immigration and Customs Enforcement, Field Office Director within 5 business days of the Court's order granting voluntary departure. 8 C.F.R. § 1240.26(c)(3)(i).
3. If you have reserved your right to appeal, then you have the absolute right to appeal the decision. If you do appeal, you must provide to the Board of Immigration Appeals, within 30 days of filing an appeal, sufficient proof of having posted the voluntary departure bond. The Board will not reinstate the voluntary departure period in its final order if you do not submit timely proof to the Board that the voluntary departure bond has been posted. 8 C.F.R. § 1240.26(c)(3)(ii).
4. If you do not appeal and instead file a motion to reopen or reconsider during the voluntary departure period, the period allowed for voluntary departure will not be stayed, tolled, or extended, the grant of voluntary departure will be terminated automatically, the alternate order of removal will take effect immediately, and the penalties for failure to depart voluntarily under section 240B(d) of the Act will not apply. 8 C.F.R. § 1240.26(c)(3)(iii), (c)(1).
5. There is a civil monetary penalty if you fail to depart within the voluntary departure period. In accordance with the regulation, the Court has set the presumptive amount of \$3,000 (or _____ instead of the presumptive amount). 8 C.F.R. § 1240.26(j).

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, the respondent is permitted to voluntarily depart the United States, without expense to the Government, within 30 days from the date of this order or any extension beyond that time as may be granted by the Department of Homeland Security ("DHS"). *See* section 240B(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(b); *see also* 8 C.F.R. §§ 1240.26(c), (f). In the event the respondent fails to voluntarily depart the United States, the respondent shall be removed as provided in the Immigration Judge's order.

NOTICE: If the respondent fails to voluntarily depart the United States within the time period specified, or any extensions granted by the DHS, the respondent shall be subject to a civil penalty as provided by the regulations and the statute and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Act. *See* section 240B(d) of the Act.

WARNING: If the respondent files a motion to reopen or reconsider prior to the expiration of the voluntary departure period set forth above, the grant of voluntary departure is automatically terminated; the period allowed for voluntary departure is not stayed, tolled, or extended. If the grant of voluntary departure is automatically terminated upon the filing of a motion, the penalties for failure to depart under section 240B(d) of the Act shall not apply. *See* 8 C.F.R. § 1240.26(c)(1).

WARNING: If, prior to departing the United States, the respondent files any judicial challenge to this administratively final order, such as a petition for review pursuant to section 242 of the Act, 8 U.S.C. § 1252, the grant of voluntary departure is automatically terminated, and the alternate order of removal shall immediately take effect. However, if the respondent files a petition for review and then departs the United States within 30 days of such filing, the respondent will not be deemed to have departed under an order of removal if the alien provides to the DHS such evidence of his or her departure that the Immigration and Customs Enforcement Field Office Director of the DHS may require and provides evidence DHS deems sufficient that he or she has remained outside of the

ALIEN NUMBER: (b) (6)

ALIEN NAME: (b) (6)

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: ☐ ALIEN ☐ ALIEN c/o Custodial Officer ☒ ALIEN's ATT/REP ☒ DHS
DATE: 4/11/12 BY: COURT STAFF SR
Attachments: ☐ EOIR-33 ☐ EOIR-
28 ☐ Legal Services List ☐ Other

Q6

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT

(b) (6)

File: A(b) (6)

June 11, 2012

In the Matter of

(b) (6)

RESPONDENT

)
)
)
)

IN REMOVAL PROCEEDINGS

CHARGES:

APPLICATIONS:

ON BEHALF OF RESPONDENT: (b) (6)

(b) (6)

ON BEHALF OF DHS: (b)(6) & (b)(7)(C) ESQUIRE

ORAL DECISION OF THE IMMIGRATION JUDGE

Respondent's a 19-year-old native and citizen of Mexico, entered unknown place and time, without admission, parole or inspection by an Immigration officer. At a Master Calendar Hearing held on November 14, 2011, Respondent admitted the allegations of fact, and conceded removability under Section

212(a)(6)(A)(i) of the Act. On that basis of his admission and concession the Court finds him deportable by clear, convincing and unequivocal evidence.

For relief, on November 14, 2011, the Respondent was not sure what he wanted to do and wanted time to consult with Counsel to determine what application to file and to file at the next date, which is today, June 11, 2012, some seven months later. After the past seven months Respondent came to court today and said that he may want to file for withholding but brought no application whatsoever, and is in fact asking for an additional 30 days to file an application because they want some statements from him even though he's lived in the United States for the last ten years. The Court finds that this is inadequate.

The Court finds that he has not prosecuted his case in good faith. The Court further finds that he has abandoned any claim that he has. He's been, as I said, in this court since February 4, 2010, two and a half years and still has no application whatsoever.

The Court finds that he is eligible for voluntary departure. We'll grant him voluntary departure until July 11, 2012, upon posting a bond in the amount of \$500 in the next five

business days with an alternative Order of Removal to Mexico
should he not comply.

It is so ordered.

(b) (6)

Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE

(b) (6) in the matter of:

(b) (6)

A (b) (6)

(b) (6)

is an accurate, verbatim transcript of the recording as provided by the Executive Office for Immigration Review and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

Rhonda E. Priest

RHONDA E. PRIEST (Transcriber)

YORK STENOGRAPHIC SERVICES, Inc.

August 20, 2012

(Completion Date)

REP/jma

U.S. Department of Justice
Executive Office for Immigration Review
United States Immigration Court

In the Matter of

File: A (b) (6)

(b) (6)

RESPONDENT

)
)
)
)

IN REMOVAL PROCEEDINGS

Transcript of Hearing

Before (b) (6) Immigration Judge

Date: June 11, 2012

Place: (b) (6)

Transcribed by YORK STENOGRAPHIC SERVICES, Inc.

Official Interpreter: (b) (6)

Language: SPANISH

Appearances:

For the Respondent: (b) (6), ESQUIRE

For the DHS: (b)(6) & (b)(7)(C) ESQUIRE

1 JUDGE FOR THE RECORD

2 Good morning. Judge (b) (6) in the matter of (b) (6)
3 (b) (6) file number (b) (6) Today's June 11, 2012, Judge (b) (6)
4 presiding.

5 JUDGE TO COUNSELS

6 Appearances please.

7 (b) (6) TO JUDGE

8 (b) (6) representing Respondent.

9 (b)(6) & (b)(7)(C) TO JUDGE

10 (b)(6) & (b)(7)(C) for the government.

11 INTERPRETER TO JUDGE

12 (b) (6), for interpreter.

13 JUDGE FOR THE RECORD

14 Okay. This is set for filing.

15 JUDGE TO (b) (6)

16 Do you have an application for me, Counselor?

17 (b) (6) TO JUDGE

18 No, Your Honor. I believe what we did last time was
19 we pled and we asked for time to request -- to review what he
20 may be qualified for.

21 JUDGE TO (b) (6)

22 Okay. And what did you come up with?

23 (b) (6) TO JUDGE

24 Your Honor, we came up with withholding of removal.

25 JUDGE TO (b) (6)

1 Then why don't you have an application with you?

2 (b) (6) TO JUDGE

3 Your Honor, because first of all we did not decide on
4 that until a few weeks ago and we tried to get a continuance to
5 get this done but it kept being returned and due to some...

6 JUDGE TO (b) (6)

7 How long does it take to put on a -- to type up a
8 withholding case?

9 (b) (6) TO JUDGE

10 Your Honor, it's a matter of getting exhibits, so --
11 attached...

12 JUDGE TO (b) (6)

13 Getting what?

14 (b) (6) TO JUDGE

15 Exhibits and talk to people about it.

16 JUDGE TO (b) (6)

17 Counsel, look -- no. This is just unacceptable.

18 You've had seven months, that's a half a year.

19 (b) (6) TO JUDGE

20 I understand, Judge.

21 JUDGE TO (b) (6)

22 So half a year to determine what -- I just sat down
23 with this lady in 15 minutes I could determine what it is that
24 she wanted. Now, you're a professional. You've worked with
25 this young man. I don't understand why it is that you need more

1 than seven months to figure out how to type a withholding case
2 from Mexico.

3 (b) (6) TO JUDGE

4 Your Honor, it's not a matter of how to file or how to
5 type, it's a matter of getting the exhibits and the witnesses to
6 talk to.

7 JUDGE TO (b) (6)

8 And what kind of exhibits are you looking for,
9 Counselor?

10 (b) (6) TO JUDGE

11 Your Honor, exhibit to support the withholding and...

12 JUDGE TO (b) (6)

13 I understand. So what exhibits are you looking for?

14 (b) (6) TO JUDGE

15 Yeah, the witness statements. We need to get some
16 witnesses to give us some...

17 JUDGE TO (b) (6)

18 The witness statements? Something happened to him in
19 the past, did it?

20 (b) (6) TO JUDGE

21 Your Honor, that's what we're trying to tie in to see
22 exactly...

23 JUDGE TO (b) (6)

24 Counsel, you've had a half a year to figure this out.
25 So don't tell me this is what we're trying to figure out. It

1 should have been figured out.

2 (b) (6) TO JUDGE

3 Your Honor, the matter is at -- we were set for...

4 JUDGE TO (b) (6)

5 You were set for filing. That's what you're set for.

6 You said you wanted to determine relief, I said, bring me an
7 application for whatever you want. We're not just stringing
8 this out for years. This case is moving along and moving along.
9 You've done nothing but waste my time today. I mean, for you to
10 come in and just say, oh, we want withholding. I couldn't -- I
11 wouldn't have set it out for seven months for that.

12 (b) (6) TO JUDGE

13 Your Honor, I believe it was -- let me see.

14 JUDGE TO (b) (6)

15 You can believe what you want. This is what it is.
16 It's for filing today.

17 (b) (6) TO JUDGE

18 Your Honor, to be honest with you I did not get that
19 impression because I got the impression that we were coming here
20 to decide what we're going to file for this young man.

21 JUDGE TO (b) (6)

22 And what you've decided is that this young man -- and
23 I don't know when he entered the United States.

24 JUDGE TO RESPONDENT

25 (b) (6) when did you come to the United States?

1 RESPONDENT TO JUDGE

2 2002.

3 JUDGE TO (b) (6)

4 Okay. So this man, who's been in the United States
5 for ten years, you've determined that the best thing for him is
6 to prove that it's more likely than not he's going to be
7 persecuted should he go back. And you're going to try to get
8 witness statements when he has even been here for ten years and
9 that's what we've been waiting for seven months. That mean --
10 this is what you're trying to tell me?

11 (b) (6) TO JUDGE

12 No, Your Honor.

13 JUDGE TO (b) (6)

14 Than what is it that you're trying to tell me?

15 (b) (6) TO JUDGE

16 Your Honor, we are prepared to tell you what he may be
17 qualified for.

18 JUDGE TO (b) (6)

19 Well, he may be qualified for 212(c). He may be
20 qualified for adjustment of status. He may be qualified for
21 NACARA. I could have figured that out...

22 (b) (6) TO JUDGE

23 Your Honor...

24 JUDGE TO (b) (6)

25 ...but he's not.

1 (b) (6) TO JUDGE

2 Your Honor, I believe he already petitioned for -- or
3 alien petition relative -- alien relative petition. Already
4 sending that out.

5 JUDGE TO (b)(6) & (b)(7)(C)

6 (b) (6) do you have notes on what this case was
7 set for today?

8 (b)(6) & (b)(7)(C) TO JUDGE

9 I have it set for filing relief applications.

10 JUDGE TO (b) (6)

11 It was set for filing?

12 JUDGE TO (b) (6)

13 And then we have all this rejected stuff. What's
14 this? His Motion to Continue?

15 (b) (6) TO JUDGE

16 Your Honor, it was Motion for Continuance.

17 JUDGE TO (b) (6)

18 Who's (b) (6) [phonetic spelling]? Who's
19 that?

20 (b) (6) TO JUDGE

21 Your Honor, that's a client that went to reset trial
22 this morning. That's why I'm here this time. It went to reset.
23 We had a trial setting for this morning.

24 JUDGE TO (b) (6)

25 Well...

1 (b) (6) TO JUDGE

2 Your Honor, the only thing I can tell you is that
3 besides getting those exhibits it has been a busy period also.
4 And my understanding was we pled the first time...

5 JUDGE TO (b) (6)

6 Go ahead.

7 (b) (6) TO JUDGE

8 We pled the first time. I was expecting to come in
9 here and tell you what he may qualify for.

10 JUDGE TO (b) (6)

11 No, I'm sorry. I'm going to find this application
12 abandoned. You completely wasted my time. You can file a
13 Motion to Reopen with an application with it if you want. This
14 will -- then it will be on your time.

15 JUDGE TO RESPONDENT

16 (b) (6), I was expecting an application
17 today. I do not have an application. I'm going to issue an
18 order.

19 JUDGE TO (b) (6)

20 Did you want voluntary departure or do you just want
21 me to issue an Order of Removal, Mr. -- Counselor -- (b) (6) ?

22 (b) (6) TO JUDGE

23 Your Honor, at this time my client -- I will have to
24 talk to my client because we did not discuss that for this
25 morning, Your Honor.

1 JUDGE TO (b) (6)

2 It doesn't sound like you've discussed anything with
3 him.

4 (b) (6) TO JUDGE

5 Yeah, we discussed -- we were working on alien
6 petition, a family member I-130, which was for...

7 JUDGE TO (b) (6)

8 An alien petition?

9 (b) (6) TO JUDGE

10 Yes.

11 JUDGE TO RESPONDENT

12 So (b) (6) I am going to issue an order today
13 because no application is here. You can file a Motion to
14 Reopen. If there's an application to it I will consider it. We
15 set this seven months ago and nothing's happened at all. So the
16 issue is whether you want to leave the United States voluntarily
17 or do you want me to just issue an -- you an order to have you
18 removed from the United States, knowing that if you appeal you
19 may stay in the United States while the appeal is pending.
20 That's the decision you have to make.

21 RESPONDENT TO JUDGE

22 Alone? To renew my case?

23 JUDGE TO RESPONDENT

24 Well, you can renew your case but I don't know that
25 it's going to be renewed. Seven months went by and nothing

1 happened, I don't know why anything's going to happen in the
2 short term.

3 (b) (6) TO JUDGE

4 Your Honor, like I said, it's not that nothing
5 happened but petition for the alien relative was being filed
6 with the Service Center.

7 JUDGE TO (b) (6)

8 You can't prove it by me. I don't have anything about
9 that. So you can take five minutes and find out if it's
10 voluntary departure. You can go out in the hallway and talk
11 with him, but there's going to be an order in this case one way
12 or the other in the next ten minutes. Do you want to talk with
13 him or you want me to just issue an order and appeal it?

14 (b) (6) TO JUDGE

15 I'll talk to him.

16 JUDGE TO (b) (6)

17 Go ahead.

18 [OFF THE RECORD]

19 [ON THE RECORD]

20 JUDGE FOR THE RECORD

21 Okay. We're back on the record.

22 JUDGE TO (b) (6)

23 What did you decide?

24 (b) (6) TO JUDGE

25 Your Honor, first of all, on behalf of my client, I'll

1 ask if you could give at least 30 days to file all these papers?

2 JUDGE TO (b) (6)

3 Okay. No. And what's the second thing?

4 (b) (6) TO JUDGE

5 Well, the second one is I explained to him about
6 voluntary departure unless the Court gives him -- have any
7 discretion to say, hey, you can appeal it, it is hard to appeal
8 voluntary departure. And removal in this case will not only
9 cause hardship to U.S. citizen folks but it will jeopardize his
10 chances of coming back here to take care of his children. So...

11 JUDGE TO (b) (6)

12 Well, if he can take voluntary departure, then if he
13 doesn't leave then that could jeopardize his chance of adjusting
14 as well because then he'll accrue unlawful presence.

15 (b) (6) TO JUDGE

16 That's right, Your Honor.

17 JUDGE TO (b) (6)

18 So what do you want to do? So what do you want,
19 voluntary departure or removal order? No, I'm asking you,
20 you're the lawyer, you just consulted with your client, what do
21 you want?

22 (b) (6) TO JUDGE

23 Your Honor, if we ordered removal and we'll file for a
24 reopen.

25 JUDGE TO (b) (6)

1 Very well.

2 (b) (6) TO JUDGE

3 Unless you will make that exception that we ask for
4 voluntary departure, allow him to file for...

5 JUDGE TO (b) (6)

6 I'm not making any exceptions in this case.

7 (b) (6) TO JUDGE

8 Your Honor, as best my understanding of what happened
9 the last time we came...

10 JUDGE TO (b) (6)

11 I understand. You can explain that to the Board of
12 Immigration Appeals, if they agree with you then everything will
13 just be fine.

14 (b) (6) TO JUDGE

15 Your Honor, before you proceed, he just told me that
16 he will take voluntary. He change his mind.

17 JUDGE TO (b) (6)

18 Okay. But you just told me that he wasn't going to
19 take voluntary departure.

20 (b) (6) TO JUDGE

21 That was because he could not file to reopen and
22 stuff, but...

23 JUDGE TO (b) (6)

24 Well, you know, if he doesn't pay the bond and he
25 files a Motion to Reopen that could jeopardize his case -- his

1 life in the United States also. I mean, if you're going to
2 appeal you're going to have to pay a \$500 bond in the next five
3 business days.

4 JUDGE TO RESPONDENT

5 (b) (6) do you have \$500 to pay a bond
6 in the next five business days?

7 RESPONDENT TO JUDGE

8 Yes.

9 JUDGE TO RESPONDENT

10 And so your lawyer says that you want to take an Order
11 of Voluntary Departure and appeal it or do you want me just to
12 order you removed? I don't know, this is what you pay the
13 lawyer for this advice. I don't know what he advised you.

14 RESPONDENT TO JUDGE

15 Voluntary departure.

16 JUDGE TO RESPONDENT

17 Will you leave by the date that I tell you to leave?

18 RESPONDENT TO JUDGE

19 Yes.

20 JUDGE TO RESPONDENT

21 Have you ever been arrested by the police?

22 RESPONDENT TO JUDGE

23 Yes.

24 JUDGE TO RESPONDENT

25 What were you arrested for?

1 RESPONDENT TO JUDGE

2 Something related to the traffic change light.

3 JUDGE TO RESPONDENT

4 Anything else?

5 RESPONDENT TO JUDGE

6 No.

7 JUDGE TO RESPONDENT

8 And do you have a birth certificate or passport that
9 would allow you entry into Mexico?

10 RESPONDENT TO JUDGE

11 Yes.

12 JUDGE TO (b)(6) & (b)(7)(C)

13 (b)(6) & (b)(7)(C) do you have any questions?

14 (b)(6) & (b)(7)(C) TO JUDGE

15 I have no questions.

16 JUDGE TO (b) (6)

17 Do you have any other questions, (b) (6) ?

18 (b) (6) TO JUDGE

19 No, Your Honor.

20 [JUDGE RENDERS ORAL DECISION]

21 JUDGE TO (b) (6)

22 (b) (6) your appeal is due on July 11, 2012.

23 (b) (6) TO JUDGE

24 Okay, Judge.

25 JUDGE TO RESPONDENT

1 (b) (6) I have given you an Order of
2 Voluntary Departure. You must depart by July 11, 2012, unless
3 you file an appeal. If you file an appeal you can stay in the
4 United States. Or if your case is in fact reopened by July 11,
5 2012, then you can stay in the United States until your case is
6 over. But if you don't file the appeal and your lawyer files
7 his request too late then I won't be able to -- then you're
8 going to have to leave by July 11, 2012. Do you understand that
9 part?

10 RESPONDENT TO JUDGE

11 Yes.

12 JUDGE TO RESPONDENT

13 You have to file a bond in the next five business days
14 of \$500. Your lawyer will explain...

15 JUDGE TO (b) (6)

16 Do you know where to file the bonds, Counsel?

17 (b) (6) TO JUDGE

18 No, Your Honor.

19 JUDGE TO (b) (6)

20 No?

21 (b) (6) TO JUDGE

22 Not right -- no, Your Honor.

23 JUDGE TO (b)(6) & (b)(7)(C)

24 Do you have the information, (b)(6) & (b)(7)(C) on where to
25 file the voluntary departure bond?

1 (b) (6) TO JUDGE

2 I think it's in the (b) (6), that's
3 where we file other...

4 JUDGE TO (b) (6)

5 All right.

6 JUDGE TO RESPONDENT

7 So you got to file that at the (b) (6) Immigration
8 Court. Your lawyer knows -- Immigration Building. Your lawyer
9 knows where that is. But you must pay that bond in order to
10 preserve your rights and we gave you all of the information
11 about that in writing. And look at that information very
12 carefully because if you appeal and you pay the bond there is
13 some points in the writing that explain that your lawyer will
14 have to explain it to you.

15 JUDGE TO (b) (6)

16 Anything else?

17 (b) (6) TO JUDGE

18 Your Honor, may we be given instruction -- filing
19 instruction because I know we did not receive that last time.

20 JUDGE TO (b) (6)

21 Filing instructions for what?

22 (b) (6) TO JUDGE

23 For the withholding of removal in case we want to file
24 for reopening and other things -- biometrics...

25 JUDGE TO (b) (6)

1 Filing instructions? There's no filing instructions.

2 (b) (6) TO JUDGE

3 Your Honor, like biometric and all those -- we usually
4 get a -- we don't have a...

5 JUDGE TO (b) (6)

6 You do -- you mean a biometrics form?

7 (b) (6) TO JUDGE

8 Well, we usually get a...

9 JUDGE TO (b) (6)

10 You do when it's time for that, but now you're in
11 appeal mode.

12 (b) (6) TO JUDGE

13 Okay.

14 JUDGE TO (b) (6)

15 So if you file it you either file it with the BIA or
16 you file it with a Motion to Reopen, I mean, it's that simple.

17 (b) (6) TO JUDGE

18 Okay.

19 JUDGE TO (b) (6)

20 And I can't give you any filing instructions. The
21 case is -- as far as I'm concerned the case is over.

22 (b) (6) TO JUDGE

23 Well, Your Honor, and I understand it's over but to be
24 -- again, I'll repeat we were not -- we did not come here with
25 the intention of turning in the forms.

1 JUDGE TO (b) (6)

2 But that's what you have to tell the Board of
3 Immigration Appeals and explain to them, otherwise you file
4 ineffective assistance of counsel, file a complaint with the
5 Texas Bar Association or whatever and then we'll consider it
6 from a different point of view.

7 (b) (6) TO JUDGE

8 I don't think we'll go that route, Your Honor.

9 JUDGE TO (b) (6)

10 Okay. Anything else from you, to the Respondent, (b) (6)

11 (b) (6)

12 (b) (6) TO JUDGE

13 No, Your Honor.

14 JUDGE TO (b) (6)

15 All right.

16 HEARING CLOSED

Immigration Judge Complaint Intake Form

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

Date Received at OCIJ: July 10, 2013

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
<u>July 10, 2013</u>	name: <u>David Neal</u> address: <u>BIA chairman</u> _____ _____ email: _____ phone: _____ fax: _____
additional complaint source details (i.e., DHS component, media outlet, third party details, A-number)	
<u>A(b) (6)</u> <u>(decided July 8, 2013)</u> <u>In re. (b) (6)</u>	

IJ name	base city	ACIJ
<u>IJ (b) (6)</u>		<u>ACIJ Dee Nadkarni</u>
relevant A-number(s)	date of incident	
<u>A(b) (6)</u>	<u>June 11, 2012 hearing</u>	
allegations		
<u>failure to provide R opportunity to file application for relief.</u>		
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 checked="" type="checkbox"/> due process <input type="checkbox"/> bias <input type="checkbox"/> legal <input type="checkbox"/> criminal

Nadkarni, Deepali (EOIR)

From: Nadkarni, Deepali (EOIR)
Sent: Wednesday, July 17, 2013 5:35 PM
To: Moutinho, Deborah (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: RE: IJC Memo (b) (6) (July 8, 2013)

Can we discuss this one, MaryBeth? It might be one to forward to Brian. The Board is apparently referring this as a IJC complaint because the IJ did not set a filing deadline and then did not allow the respondent to file an asylum application at the June 11, 2012 hearing.

Well, the colloquy for the November 14, 2011 hearing shows the contrary:

- Respondent's Counsel to IJ: Your Honor, I would like attorney prep time? (Tr. at 3)
- IJ to Counsel: Sure. Sure. We'll have you come back on June 11, at nine o'clock, is that all right? (Tr. at 3)
- Counsel to IJ: No problem, Your Honor.
- IJ to Respondent: June 11, 2012, at nine o'clock, we'll take any application you'd like to provide. And I'm giving you a half a year so you've got plenty of time to work with your lawyer to get the right application to me. (Tr. at 4)
- Respondent to IJ: Okay. (Tr. at 4)

The judge gave the respondent almost 7 months of a filing deadline! (b) (6) made it clear to have the application in court on June 11. First of all, I can't believe the Board reversed the judge. But then to forward to us for IJC? In a DETAINED case?!!!! Am I missing something here?

Dee Nadkarni
Assistant Chief Immigration Judge
703.305.1247

From: Moutinho, Deborah (EOIR)
Sent: Wednesday, July 10, 2013 2:51 PM
To: Nadkarni, Deepali (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: FW: IJC Memo - (b) (6) (July 8, 2013)

Good Afternoon

Please see the attached case concerning IJ (b) (6). If you would like to review the ROP please let me know and I will be happy to get it from the BIA.

Thank you
Deborah

From: Henderson, Suzette M. (EOIR)
Sent: Wednesday, July 10, 2013 1:57 PM
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) (July 8, 2013)

Good afternoon,

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