



## Detail

Complaint Number: 714

Immigration Judge: (b)(6)

Complaint Received Date: 01/15/13

Current ACIJ  
Bartolomej, Richard J.

Base City  
(b) (6)

Status  
CLOSED

Final Action  
Complaint concluded --  
corrective action already taken

Final Action Date  
01/18/13

**Past ACJIS:**

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

Complaint Narrative: Insufficient analysis and impatience

### Complaint History

01/15/13 Complaint referred to ACIJ  
01/18/13 Complaint concluded -- corrective action already taken  
01/22/13 Database entry created

Sep 11, 2013

1 of 1

(b) (6)



## Memorandum

Subject	Date
(b) (6) (January 14, 2013)	January 15, 2013

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

Attached please find a copy of the Board's decision dated January 14, 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

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File: A(b) (6)

Date:

**JAN 14 2013**

In re:

**(b) (6)**

**IN REMOVAL PROCEEDINGS**

**APPEAL**

**ON BEHALF OF RESPONDENT: Pro se**

**ON BEHALF OF DHS:**

**(b)(6) & (b)(7)(C)**

**Assistant Chief Counsel**

**CHARGE:**

Notice: Sec. 237(a)(2)(C), I&N Act [8 U.S.C. § 1227(a)(2)(C)] -  
Convicted of firearms or destructive device violation

Sec. 237(a)(2)(A)(ii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(ii)] -  
Convicted of two or more crimes involving moral turpitude

Lodged: Sec. 237(a)(2)(E)(i), I&N Act [8 U.S.C. § 1227(a)(2)(E)(i)] -  
Convicted of crime of domestic violence, stalking, or child abuse, child  
neglect, or child abandonment

Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -  
Convicted of aggravated felony

**APPLICATION: Termination**

The respondent has appealed from the August 9, 2012, decision of an Immigration Judge finding the respondent removable as charged and ineligible for relief.

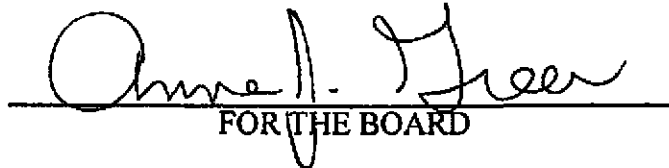
On appeal, the respondent argues that the Immigration Judge erroneously sustained the charges against him and that he did not understand the proceedings. The respondent also argues that the Immigration Judge erred by denying his adjustment of status application and by not giving him a chance to submit his asylum application.

In this case, although the Immigration Judge found the respondent removable as charged, (b) (6) did not analyze the respondent's state court convictions to indicate why they constitute removable offenses. An Immigration Judge's decision that lacks sufficient analysis does not provide an adequate opportunity to the alien to contest the Immigration Judge's determinations on appeal and leaves the Board without adequate means of reviewing the bases for the Immigration Judge's

decision in light of the respondent's arguments on appeal. *See Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999); *see generally Matter of M-P-*, 20 I&N Dec. 786 (1994) (finding that an Immigration Judge must fully explain the reasons for denying a motion in order to allow the respondent a fair opportunity to contest the decision and the Board an opportunity for meaningful appellate review). In addition, the Immigration Judge displayed impatience with the respondent's uncertainty regarding legal terms and procedures, which inhibited the respondent from presenting his case (Tr. at 35-44).

Accordingly, the record will be remanded to the Immigration Judge for further proceedings and the issuance of a full decision. Any applications for relief will be considered on remand and the Immigration Judge will give the respondent more latitude to present his case. Further, we note that the Immigration Judge is obligated by regulation to explain the factual allegations and charges against the respondent to him in non-technical language. *See* 8 C.F.R. § 1240.10(a)(6). The Immigration Judge is also required to read any lodged allegations and charges to the respondent, explain them to him, and give him a reasonable continuance to address the additional factual allegations and charges. *See* 8 C.F.R. § 1240.10(e).

ORDER: The record is returned to the Immigration Court for further proceedings in accordance with this decision.

  
FOR THE BOARD

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

(b) (6)

File: A (b) (6)

August 9, 2012

In the Matter of

(b) (6)

RESPONDENT

)  
)  
)  
)

IN REMOVAL PROCEEDINGS

CHARGES:

APPLICATIONS:

ON BEHALF OF RESPONDENT: (b) (6)

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

ORAL DECISION OF THE IMMIGRATION JUDGE

The United States Government began this case against the respondent by filing a Notice to Appear (NTA) on January 13, 2012. The NTA was served upon the respondent on March 6, 2012. In proceedings before this Court on March 19, 2012, respondent was given his rights advisals. Respondent indicated to the Court that he understood those advisals. The Court notes that respondent appeared on his own behalf on that date. Subsequently, on March 19, 2012, respondent was served with an

I-261. Respondent chose to continue the case so that he could have time to review the I-61. Thereafter, in proceedings before this Court on April 19, 2012, the respondent admitted NTA allegations 1 through 5, denied allegations 6 and 7 and admitted allegations 8 and 9. Respondent conceded both charges in the NTA. On that same date, respondent admitted allegation no. 10 and denied allegation no. 11. He denied the I-261 charge. In subsequent proceedings, an evidentiary hearing was held and the allegations and charges denied were sustained. The Court found respondent removable. The Court designated Mexico as the country of removal. While respondent indicated he had a fear of returning to Mexico and the Court found that respondent's fear was not based on any protected category. Thereafter on June 26, 2012, (b) (6) filed his notice of appearance of the respondent. At (b) (6) request, the matter was continued to August 9, 2012, to allow him to consult with his attorney. The Court notes that respondent was previously given an I-589 application, given his expressed fear of returning to Mexico. Respondent asked the Court to give him additional time to discuss the filing of the asylum application with his attorney and the first due date of June 26, 2012, was vacated. In the appearance before the Court this morning, respondent's counsel advised the Court that the I-589 had been prepared in conjunction with counsel's consultation with his client. (b) (6) indicated to the Court that he had asked his

client if he wishes to actually submit the application and respondent refused to answer the question, thereupon, (b) (6) requested that the Court direct its questions to the respondent which the Court did do. On numerous occasions, the Court asked respondent if he wished to proceed with submission of the I-589 application. Respondent refused to answer the Court's question.

The Court finds that respondent has no mental health impairment. He has not asserted one. His affect is appropriate time, place, and orientation as to persons involved. He has no and has not had any problems speaking the English language. He has been given every opportunity to consult with his attorney and make a decision as to the relief he wishes to proceed. The respondent continues to decline to advise the Court of whether he wishes to submit the I-589 application. The Court concludes that respondent is simply being obstreperous; he refuses to provide the Court with a clear answer to a simple question. The Court finds based on the Court's restated question, that is if respondent does not wish to state that he will submit the I-589 application, the Court will deem it as a decision to not file the I-589 application, in fact, a waiver and that is a conclusion the Court draws on this date that respondent has chosen, knowingly and willfully, to not file the I-589 application.

Respondent has been found removable. Respondent has no other relief from removability. It is the Court's decision that

respondent is ordered removed from the United States to Mexico. Respondent has reserved appeal. The appeal date is September 10, 2012.

(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.

Lori A. Gochnour

LORI A. GOCHNOUR (Transcriber)

FREE STATE REPORTING, Inc.

SEPTEMBER 10, 2012

(Completion Date)

1 that. They were supposed to be here today. I don't know what  
2 happened.

3 Q. Sir, well, they're not here today and you've had  
4 plenty of time to prepare and I'm going to make a decision  
5 today. Do you have anything to say about the issues that are  
6 relevant to today's hearing?

7 A. You mean about the allegations?

8 Q. Yes. The allegations and the charges, sir. I'm going  
9 to make a decision.

10 A. I mean, I don't really think I'm getting a fair trial,  
11 I mean I don't -- I'm trying to say something but it's just not  
12 coming out right.

13 Q. Well, I don't know why you think it's not fair. This  
14 is how we do it in every single case.

15 A. Yeah.

16 Q. And you've known about this, you've had the assistance  
17 of the (b) (6) I have followed every  
18 single rule that I am required to and then some in giving you  
19 due process, so now it's a time for us to proceed, so you can  
20 say something about the issues that are relevant and if you  
21 don't have anything to say on that, I'm going to make a  
22 decision.

23 A. I do but I just don't know how to say it, I mean I  
24 don't know how to --

25 Q. Okay. Then you don't have anything to say then?

1 A. I do, just that --

2 Q. Sir, either say it or I'm going to move on.

3 A. I mean I never really meant to hurt anybody, you know

4 what I mean? I mean I don't think these allegations are right.

5 Q. Okay.

6 A. I'm just confused.

7 Q. Have you taken any medication today?

8 A. No.

9 Q. Have you -- have you suffered an injury that causes

10 you to be confused?

11 A. No, just I don't understand.

12 Q. Are you under any mental health disability?

13 A. No, I just don't understand the Immigration laws.

14 Q. Well, it's complicated but I told you that I'm going

15 to decide whether you committed the offenses charged in

16 allegations 6, 7, 11 and 13, you understand that, right? Yes or

17 no? You understand that that's what I'm going to decide, right?

18 A. I mean --

19 Q. I just told you that. You understand what I just said

20 to you?

21 A. That you're going to decide on the allegations?

22 Q. Yes, you understand that, yes or no?

23 A. Yes.

24 Q. And you understand that I'm going to decide on the two

25 remaining charges against you, correct?

1           A.    What two remaining charges are that?

2           Q.    I just told you that, the commission of the two crimes  
3 involving moral turpitude and the cries alleging that you  
4 committed a crime of violence, do you understand that?

5           A.    But I don't think the --

6           Q.    Okay, sir? Do you understand that?

7           A.    I guess.

8           Q.    Yes or no?

9           A.    I really don't understand nothing.

10          Q.    What don't you understand? The Government has four  
11 charges against you. I've sustained two. I'm going to make a  
12 decision on the other two, do you understand that?

13          A.    What does sustain mean? I mean.

14          Q.    I'm going to make a decision on the other two charges  
15 whether the Government has proved those charges, do you  
16 understand that?

17          A.    Okay.

18          Q.    All right, so you're not confused, you know what's  
19 going on. I'm going to decide the allegations and charges  
20 against you. Do you have anything more to say on that  
21 substantively?

22          A.    I really need more time, Your Honor.

23          Q.    Well I'm not going to give you more time. I'm going  
24 to decide today. You had plenty of time. You've been here 60  
25 days or longer.

1 A. Yeah, but I mean --

2 Q. No, sir. This is not an argument. I'm telling you  
3 what I've decided. We're going to move forward today. I'll  
4 give you one last opportunity to tell me whatever it is you want  
5 me to know about the things I'm going to decide today and if you  
6 don't have anything to say about those things, I'm going to make  
7 a decision.

8 A. I'm sorry --

9 Q. I've explained everything to you very clearly. You  
10 know what's going on so you can say something or not.

11 A. I'm trying to say something, Your Honor, just that I  
12 don't really know what to say about it, you know what I mean. I  
13 mean I know these allegations are wrong.

14 Q. Okay.

15 A. And you know I'm sorry for everything, you know, I  
16 mean obvious I got a drinking problem and all that you know, I  
17 mean I know that has nothing to do with --

18 Q. That does not deal with removability. It goes to  
19 relief and I want you to say something that goes to the issue of  
20 my making a decision on these allegations today, not things that  
21 are irrelevant to that decision.

22 A. About the allegations you mean? I mean I don't  
23 understand what you mean.

24 Q. Yes, you do understand. I just told you that. I'm  
25 going to decide if the Government has proved allegations 6, 7,

1 11 and 13 against you. I'm going to decide if the Government  
2 has proved the other two charges against you. You understand  
3 that, correct? That's easy to understand what I'm going to do  
4 today, right? Do you understand that, that I'm going to make a  
5 decision on those allegations?

6 A. I understand you're going to make a decision.

7 Q. Okay.

8 A. But I don't really get it.

9 Q. Then that's fine. You understand what I'm going to  
10 do. If you don't have anything else to day, I'm going to make a  
11 decision.

12 A. I don't think these allegations are right, Your Honor.

13 Q. You've said that about four times. I know you don't  
14 think the allegations are right.

15 A. Okay. I don't really know what to say, see that's  
16 what I'm saying.

17 Q. Okay, then thank you. I'm going to make a decision  
18 then.

19 JUDGE FOR THE RECORD

20 The Court finds that the Government has met its burden of  
21 proof and established the fact of allegations 6, 7, 11 and 13,  
22 and, based upon that, has met its burden of proof on the  
23 remaining two charges, specifically at Exhibit 4 -- specifically  
24 beginning with allegation no. 6 at Exhibit 4, tab D, there's a  
25 docket from the (b) (6) Court, state of (b) (6)

1 indicating that the respondent committed the offense of use of  
2 force against a peace officer while on duty in violation of CPC,  
3 242. The documents further indicate at Exhibit 4, tab D, page  
4 18, that respondent pled no contest to that offense on December  
5 6, 2000, he was further sentenced on January 10th, 2001, to 3  
6 years' probation and 9 days in jail.

7 JUDGE TO (b) (6)

8 Q. Do you understand the decision that I've made that you  
9 committed that crime and that's the sentence you got? You  
10 understand that, correct? Yes or no?

11 A. I'm trying to follow along, Your Honor.

12 Q. I decided that you were convicted of that crime and  
13 that was the sentence you got, you understand that?

14 A. Which one, the nine days one?

15 Q. The one against the police officer you were sentenced  
16 to nine days. You agree with that, right? You committed that  
17 crime and that was the sentence you got, right? Okay. I'm  
18 going to move forward. As far as allegation no. 11, the Court  
19 once again will move to Exhibit 4 regarding the allegation of  
20 use of force or violence against a spouse, a cohabitant, in  
21 violation of CPC 243(e)(1). The Court finds that the date of  
22 offense is May 23rd, 2006. Respondent was convicted on April  
23 23rd, 2009, in the Superior Court of (b) (6), (b) (6),  
24 (b) (6). At Exhibit 4, tab F, page 33, there is a criminal  
25 complaint and the charge at tab G, page 35, there is a plea

1 agreement and at tab I and further at page 59, there is a change  
2 of plea and sentencing. The facts of the offense are set forth  
3 on page 41 and at tab -- at Exhibit 4, tabs H through J, the  
4 Court finds that respondent was sentenced to probation and  
5 incarceration. As to allegation no. 13, the Court finds that as  
6 previously stated on the basis of Exhibit 4, that the offenses  
7 occurred on different dates. Allegation no. 10 occurred on May  
8 23rd, 2006, and allegation -- the offense in allegation no. 11  
9 occurred on October 8th, 2008. Therefore, the dates of offense  
10 are two separate occasions two years apart. There's no  
11 indication that they were related as far as time, place, date,  
12 or commission thereof. The fact that respondent was sentenced  
13 for both offenses on the same date is of no consequence. Based  
14 on those findings, the Court will sustain the two CIMT charges  
15 against the respondent as well as the domestic violence offense.  
16 The Court finds respondent removable -- I'm sorry, the Court  
17 will sustain all of the allegations and charges against  
18 respondent and the Court finds respondent removable.

19 JUDGE TO (b) (6)

20 Q. Sir, if you are removed, to what country do you want  
21 to be removed?

22 A. I'm sorry, Your Honor, but --

23 Q. Answer my question. If I deport you, what country do  
24 you want to be deported to?

25 A. Well, I'm originally from Mexico so but --



1 Q. You want to answer my question, sir? What country do  
2 you want to be deported to if I deport you?

3 A. Mexico.

4 Q. Are you afraid of returning to Mexico?

5 A. Yes, Your Honor.

6 Q. Are you afraid that the Mexican Government is going to  
7 harm you because of your race?

8 A. Not because of my race but --

9 Q. Are you afraid that the Mexican government is going to  
10 harm you because of your nationality?

11 A. Maybe.

12 Q. Why do you think that the Mexican government would  
13 want to harm you because you're Mexican.

14 A. I never been to Mexico.

15 Q. Okay, that doesn't have anything to do with the fact  
16 of my question. Why do you think the Mexican government wants  
17 to harm you because you're Mexican? Do you have any reason to  
18 back up your belief that the Mexican government would harm you  
19 because you're Mexican?

20 A. I don't know about the government but I don't know.

21 Q. I'm asking you about the government, please focus on  
22 my question. Are you afraid that the Mexican government is  
23 going to harm you because of your religion?

24 A. Yes.

25 Q. What is your religion that would cause the Mexican

1 the answers to the questions you have provided to me, you would  
2 not meet the requirements for asylum. However, it appears that  
3 if you want to file that application, you can and I will give it  
4 to you, I'll set a date for you to return it to me, and we will  
5 have a hearing and I will decide whether you are entitled to  
6 asylum, withholding, or relief under the Convention against  
7 Torture. Otherwise, if you don't file that application, I'm  
8 going to remove you from the United States today.

9 A. No, I would like to apply for asylum.

10 Q. If you file a frivolous application for asylum, you  
11 will be barred forever from receiving any benefits under the  
12 Immigration and Nationality Act. A frivolous application is one  
13 that contains answers to questions which are fabricated or an  
14 application brought for an improper purpose. In order to obtain  
15 asylum in the United States, not being granted asylum does not  
16 mean that your application is frivolous. Because of the  
17 consequences of filing a frivolous application, it is  
18 recommended that you get an attorney to assist you in filling  
19 out your application, so I have now provided you the frivolous  
20 asylum advisal and you are on notice that if you file it  
21 frivolously, it will have tremendous consequences on your  
22 ability to ever return to the United States lawfully. I'm going  
23 to set a date for you to return that application to me. Will  
24 you have it ready by June 4th? You have to have the original  
25 and three copies along with any supporting documents. Is that

# Immigration Judge Complaint Intake Form

**HQ Use Only:**  
complaint #: \_\_\_\_\_  
source: first / subsequent

**Date Received at OCIJ:** \_\_\_\_\_

complaint source type	
<input type="checkbox"/> anonymous <input checked="" type="checkbox"/> BIA <input type="checkbox"/> respondent's attorney <input type="checkbox"/> respondent <input type="checkbox"/> third party (e.g., relative, uninterested attorney, courtroom observer, etc.) <input type="checkbox"/> other: _____	<input type="checkbox"/> ___ Circuit <input type="checkbox"/> EOIR <input type="checkbox"/> DHS <input type="checkbox"/> Main Justice <input type="checkbox"/> OIL <input type="checkbox"/> OPR <input type="checkbox"/> OIG <input type="checkbox"/> media
complaint receipt method	
<input type="checkbox"/> letter <input checked="" type="checkbox"/> IJC memo (BIA) <input type="checkbox"/> fax <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
1-15-13	name: Board of Immigration Appeals _____ address: 5107 Leesburg Pike, Suite 2400, Falls Church, VA 220412 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)	(b) (6)	Jack H. Weil
relevant A-number(s)	date of incident	
A(b) (6)	9-10-12	
allegations		
Insufficient analysis and impatience.		
nature of complaint		
<input checked="" type="checkbox"/> in-court conduct <input type="checkbox"/> out-of-court conduct <input type="checkbox"/> due process <input type="checkbox"/> bias <input type="checkbox"/> legal <input type="checkbox"/> criminal <input type="checkbox"/> incapacity <input type="checkbox"/> other: _____		



## EOIR FOIA Processing (EOIR)

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**From:** Weil, Jack (EOIR)  
**Sent:** Friday, January 18, 2013 9:46 AM  
**To:** O'Leary, Brian (EOIR); McGoings, Michael (EOIR); Keller, Mary Beth (EOIR); Kelly, Ed (EOIR); Scheinkman, Rena (EOIR); Rosenblum, Jeff (EOIR)  
**Cc:** Weil, Jack (EOIR)  
**Subject:** 1/17/13 Prprobationary Period Determination for U (b) (6)  
**Attachments:** SAR chart.docx

Dear All,

The probationary period for Immigration Judge (b) (6) ends on (b) (6)

# (b)(5) & Non-Responsive



Thank you,  
Jack