



Detail

Complaint Number: 722

Immigration Judge: (b)(6)

Complaint Received Date: 02/13/13

Current ACIJ
Nadkarni, Deepali

Base City
(b) (6)

Status
CLOSED

Final Action
Oral counseling

Final Action Date
06/13/13

Past ACJIS:

A-Numbers(s)	Complaint Nature(s)	Complaint Source(s)
(b)(6)	Bias	Respondent Atty (b) (6)
		(b) (6)

Complaint Narrative: 1J discusses cases prior to going on record.

Complaint History

02/13/13 Complaint referred to ACIJ
02/21/13 Database entry created
06/13/13 Oral counseling

Sep 11, 2013

1 of 1

EOIR FOIA Processing (EOIR)

From: IJConduct, EOIR (EOIR)
Sent: Wednesday, February 13, 2013 4:06 PM
To: Nadkarni, Deepali (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: FW: Complaint Regarding the Professionalism of IJ (b) (6)

Follow Up Flag: Follow up
Flag Status: Flagged

Please see the below complaint that came into the IJ Conduct mailbox.

Thank you
Deborah

From: (b) (6)
Sent: Wednesday, February 13, 2013 3:52 PM
To: IJConduct, EOIR (EOIR)
Subject: Complaint Regarding the Professionalism of IJ (b) (6)

My name is (b) (6) and I am an attorney in (b) (6). I would like to complain about the shocking lack of professionalism of IJ (b) (6). Most notably the absence of impartiality and the presence of bias in the proceedings in which I am appearing before (b) (6). I represent the Respondent, (b) (6). My complaints arise out of the IJ's conduct in master calendar hearings on January 17, 2013 and February 13, 2013. At these hearings, my client appeared by video conference and I appeared telephonically.

As an introductory matter, IJ (b) (6) appears to like to discuss the case before (b) (6) informally off the record before going on the record. (b) (6) has done this on both master hearings in which I have appeared. The foundation for this complaint as to IJ (b) (6) partiality and bias is premised on (b) (6) decisions and instructions off the record which bear no resemblance to (b) (6) decisions and instructions on the record, coupled with (b) (6) initial refusal to go on the record at the beginning of the February 13, 2013 hearing. In fact, no resemblance is an understatement. IJ (b) (6) expressly contradicts (b) (6) on decisions and orders (b) (6) makes off the record when (b) (6) subsequently goes on the record.

In more detail, evidence of the IJ's unprofessionalism is as follows:

January 17, 2013 Hearing. Initial Hearing.

Following the initial pleasantries as I came on the telephone and off the record, the IJ said:

"OK, (b) (6) what are we doing on this case?"

I replied "It is a withholding and CAT case Judge"

The IJ replied "its only a CAT case. He has a particularly serious crime so there is no withholding"

I replied "I think there are some significant arguments that it is not a particularly serious crime"

The IJ that stated "I am going to find that it is a particularly serious crime, so this is just a CAT case"

I replied "are you not going to permit any arguments on the serious crime issue"

The IJ then said "No, let's go on the record"

The hearing then proceeded recorded on the DAR. The DAR is evidence of the conduct of the remainder of the hearing. Suffice to say that on the record IJ (b) (6) indicated that (b) (6) would consider arguments on the particularly serious crime issue.

Given the huge disparity between the IJ's approach on and off the record, I was prepared to be more cautious on the next hearing concerning discussions off the record. Unfortunately, without success.

February 13, 2013

This hearing began (again off the record) with issues relating to the IJ's request for a new OSC which everyone agreed was unnecessary on a reopened asylum case. The IJ then asked me:

"What is the relief you are seeking"

I replied "Withholding of removal and CAT"

The IJ replied "No you are not, I told you at the last hearing there was no withholding, only CAT"

I replied "are you pretermittting withholding?"

The IJ said "yes, I am pretermittting withholding"

I replied "how can you pretermitt withholding when at the last hearing you said you would accept arguments on the crime issue? I'd like to go on the record...."

The IJ replied "Where do you practice (b) (6) ?"

I said "I'd like to go on the record..."

The IJ repeated "where do you practice (b) (6)"

I replied "no judge, I would really prefer to go on the record"

Silence..... and then the IJ began proceedings on the record.

Once again, the DAR is evidence of the recorded part of the hearing. This part of the hearing is notable for the IJ, in a more conciliatory tone, indicating that (b) (6) would consider all the matters put before (b) (6)

Here is the heart of the complaint: Neither I nor the Respondent know which IJ we are getting. Are we getting the IJ who off the record tells me (b) (6) considers and has concluded that the Respondent's property crimes particularly serious crimes for the purposes of withholding, or the IJ who says (b) (6) will entertain arguments on the issue. Are we getting the IJ who has pre-terminated the withholding claim and scoffed at its relevance to Respondent's relief, or the IJ who says (b) (6) will consider arguments when they are raised?

The uncertainty – which the foundation of this complaint - goes to the heart of the IJ's professionalism and the due process obligations of the court. Issues of bias and partiality are cornerstones of the court, and in this case, these cornerstones are missing. If the question is which IJ are we getting, the off or the on the record IJ, it is clear to me and

the respondent that we are getting the off-the record IJ. IJ (b) (6) provides (b) (6) real thoughts off the record, and uses the on the record hearing as a perfunctory recitation of the process of the case.

Corroboration for IJ (b) (6) bias against my client is found in (b) (6) approach to my motion to change venue. My client's withholding claim is based on events that took place in Armenia when he was a child. It is his mother's testimony (she was the lead respondent in the asylum case that was granted in (b) (6) in 2010). Respondent's mother lives in (b) (6) (b) (6). Notwithstanding the significant expense and inconvenience Respondent's mother must incur to travel to (b) (6) to present evidence and the correspondence expense of transporting her counsel to (b) (6) – coupled with the lack of inconvenience to DHS in moving Respondent to (b) (6) – IJ (b) (6) denied the motion in a simple form order. No written decision was issued. DHS did not file an opposition to the motion.

Thank you for your consideration of this complaint

(b) (6)
Immigration Attorney

(b) (6)

Immigration Judge Complaint Intake Form

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

Date Received at OCIJ: 2.13.13

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

complaint details		
IJ name	base city	ACIJ
13 (b) (6)	(b) (6)	Nadkarni
relevant A-number(s)	date of incident	
A (b) (6)	2.13.13	
allegations		
13 Discusses cases prior to going on record.		
nature of complaint		
<input type="checkbox"/> in-court conduct <input type="checkbox"/> out-of-court conduct <input type="checkbox"/> due process <input checked="" type="checkbox"/> bias <input type="checkbox"/> legal <input type="checkbox"/> criminal <input type="checkbox"/> incapacity <input type="checkbox"/> other: _____		

2.14.13 - IJ (b) (6) sm sponte recused self. Apr 18/13
next h. → (b) (6)

Nadkarni, Deepali (EOIR)

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BIG Spring!

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To: IJConduct, EOIR (EOIR)
Subject: Complaint Regarding the Professionalism of IJ (b) (6) TX

→ Took a minute when trying to make phone call off DAR.
"Short pleasantries"

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→
"Road map" of how hearing would proceed.

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(b) (6)

Immigration Attorney

(b) (6)