



Detail

Complaint Number: 764

Immigration Judge: (b)(6)

Complaint Received Date: 06/04/13

Current ACIJ
Santoro, Christopher A.

Base City
(b) (6)

Status
CLOSED

Final Action
Complaint dismissed as merits-
related

Final Action Date
06/10/13

Past ACJIS:

A-Number(s)	Complaint Nature(s)	Respondent Atty	Complaint Source(s)
(b)(6)	Legal	(b) (6)	(b) (6)

Complaint Narrative: Complainant alleges that IJ failed to remain current on developments in the law and disregarded R's brief that was filed. As a result of IJ's erroneous view of the law, complainant's client was denied relief to which he was entitled. DHS ultimately exercised PD and R received 42A cancellation.

Complaint History	
06/05/13	IJ reviews underlying decision and proceedings
06/10/13	Complaint dismissed as merits-related
06/12/13	Database entry created

Immigration Judge Complaint Intake Form

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

Date Received at OCIJ: 6/4/2013

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
6/4/2013	name: (b) (6)
additional complaint source details (i.e., DHS component, media outlet, third party details, A-number)	address: (b) (6)
(b) (6)	email: (b) (6)
	phone: (b) (6)
	fax: (b) (6)

complaint details		
IJ name	base city	ACIJ
(b) (6)	(b) (6)	Santoro
relevant A-number(s)	date of incident	
(b) (6)	5/26/2013	
allegations		
<p>Complainant alleges that IJ failed to remain current on developments in the law and disregarded R's brief that was filed. As a result of IJ's erroneous view of the law, complainant's client was denied relief to which he was entitled. DHS ultimately exercised PD and R received 42A cancellation. Complainant recommends added training materials for IJs.</p>		
nature of complaint		
<input type="checkbox"/> in-court conduct <input type="checkbox"/> out-of-court conduct <input type="checkbox"/> due process <input type="checkbox"/> bias <input checked="" type="checkbox"/> legal <input type="checkbox"/> criminal <input type="checkbox"/> incapacity <input type="checkbox"/> other: _____		

EOIR FOIA Processing (EOIR)

From: IJConduct, EOIR (EOIR)
Sent: Wednesday, June 12, 2013 8:30 AM
To: Santoro, Christopher A (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: FW: Complaint and Request for Retraining - (b) (6) Immigration Court

From: (b) (6)
Sent: Monday, June 10, 2013 5:06 PM
To: IJConduct, EOIR (EOIR)
Subject: RE: Complaint and Request for Retraining - (b) (6) Immigration Court

Judge Santoro:

Thank you for your email, and for taking the steps you've identified. As I stated in my submission, these are good, conscientious judges with an insanely heavy docket and not a lot of time to ponder the vagaries of each newly decided Supreme Court case as it happens. I look forward to your office providing them additional resources to help them do the right thing.

Best regards,

(b) (6)

From: IJConduct, EOIR (EOIR) [<mailto:EOIR.IJConduct@usdoj.gov>]
Sent: Monday, June 10, 2013 3:16 PM
To: Andrew Free; IJConduct, EOIR (EOIR)
Subject: RE: Complaint and Request for Retraining - (b) (6) Immigration Court

Attorney (b) (6)

Thank you for your e-mail dated June 4, 2013 regarding your observations about the (b) (6) Immigration Court and the case with Judge (b) (6) that you referenced. The Executive Office for Immigration Review and the Office of the Chief Immigration Judge provide ongoing professional development and educational programs for the immigration judges. We thank you for highlighting this issue and we will consider your feedback as we develop future materials. I will also review the specific case you attached and will follow up as appropriate.

Christopher A. Santoro
Assistant Chief Immigration Judge

From: (b) (6)
Sent: Tuesday, June 04, 2013 11:24 AM
To: IJConduct, EOIR (EOIR)
Subject: RE: Complaint and Request for Retraining - (b) (6) Immigration Court

Please note that the date of the event should be May 16 – not May 26.

(b) (6)

From: (b) (6)
Sent: Tuesday, June 04, 2013 10:14 AM
To: 'EOIR.IJConduct@usdoj.gov'
Subject: Complaint and Request for Retraining - (b) (6) Immigration Court

I write to report a gap in continuing legal education and request additional training of the Immigration Judges in the (b) (6) Immigration Court. While the specific case that triggered this complaint was adjudicated by Judge (b) (6) (b) (6), it appears that other judges may require similar training.

Complaint details:

1. Name of Judge (b) (6)
2. Judge (b) (6) made an aggravated felony determination relying on outdated precedent.
3. May 26, 2013 in (b) (6)
4. See below.
5. See below.

I wish to state at the outset that I have the utmost respect for the Judges in the (b) (6) Immigration Court, including and especially Judge (b) (6). They are intelligent, conscientious public servants doing their best to manage a very heavy docket, and an ever-changing body of caselaw, and to ensure that detained respondents do not spend any more time in detention than absolutely necessary to resolve their cases. Their fairness and good faith in adjudicating cases is to be commended, even if their workload makes exercising such virtues a daily struggle.

To that end, it seems that EOIR and the ACIJ could assist these dedicated professionals and the parties appearing before them by creating an update to the IJ benchbook or a current bench memo regarding modifications to the aggravated felony analysis in *Nijhawan*, *Kawashima*, and *Moncrieffe*.

The decision giving rise to this complaint is attached. Central to the Respondent's aggravated felony defense was the fact that the restitution amount he paid encompassed dismissed charges – not a single offense. In the "applicable law"

section of the Court's decision, the Court does not mention *Nijhawan*, which governs the analysis of amount of loss to the government for an aggravated felony charge relating to tax offenses. Respondent briefed this issue extensively, seemingly to no avail. (See attached).

Ultimately, the Department reopened the case, dropped the aggravated felony charge, and Respondent was granted LPR cancellation of removal. Had it not been for DHS's exercise of prosecutorial discretion. However, Respondent could still be mandatorily detained pending an appeal of the IJ's clearly erroneous aggravated felony determination.

It is my hope that additional training can assist the bench and ensure that detained individuals with relief do not suffer from similar oversights in the future.

I am happy to answer any questions ACIJ may have, but I would appreciate it if my complaint would remain **anonymous**.

Many thanks,

(b) (6)

(b) (6)