



Complaint Received Date: 02/27/13

**Final Action Date**  
03/07/13

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

**Complaint Narrative:** The BIA concluded that in the interest of R's due process rights and a full and fair hearing the case was remanded "before a different Immigration Judge".

Complaint History	
02/27/13	Complaint referred to ACU
03/01/13	Database entry created
03/07/13	Oral counseling

## EOIR FOIA Processing (EOIR)

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**From:** Fong, Thomas (EOIR)  
**Sent:** Thursday, March 07, 2013 1:58 PM  
**To:** Moutinho, Deborah (EOIR); Keller, Mary Beth (EOIR)  
**Subject:** RE: IJC Memo - Matter of (b) (6)  
**Attachments:** Complaint (b) (6) referral.doc

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Attached is the updated/completed IJ Complaint Intake form and the actions I took on this BIA referral. Oral counseling was given and the IJ was wholly receptive of the criticism of the BIA and the counseling given by this ACIJ. See last entry on Action Taken section of the form. No further action recommended.

Thomas Y.K. Fong  
Assistant Chief Immigration Judge  
Immigration Court/EOIR/DOJ  
606 South Olive Street, 15th Floor  
Los Angeles, CA 90014  
(213)894-2811

(b) (6)

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**From:** Fong, Thomas (EOIR)  
**Sent:** Wednesday, February 27, 2013 2:14 PM  
**To:** Keller, Mary Beth (EOIR)  
**Cc:** Moutinho, Deborah (EOIR)  
**Subject:** RE: IJC Memo - Matter of (b) (6)

Non-Responsive

Non-Responsive

I was wondering when this was coming down from you and Deb, as I saw it earlier from the BIA referral of IJ decisions sent to ACIJ's and already had started the "counseling and review" process yesterday and spoke with IJ (b) (6) initially on it already. So I am a little ahead of the game on this one. So I do not know if I have to "thank" Deborah for sending me this one today. But I guess I will say Thanks so much in this acknowledgement.

Thomas Y.K. Fong  
Assistant Chief Immigration Judge  
Immigration Court/EOIR/DOJ  
606 South Olive Street, 15th Floor  
Los Angeles, CA 90014  
(213)894-2811

(b) (6)

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**From:** Keller, Mary Beth (EOIR)  
**Sent:** Wednesday, February 27, 2013 1:50 PM  
**To:** Fong, Thomas (EOIR)  
**Cc:** Moutinho, Deborah (EOIR)  
**Subject:** FW: IJC Memo - Matter of (b) (6)

Hi Tom –

Non-Responsive

Deborah would have forwarded this tomorrow

Non-Responsive

Non-Responsive

Non-Responsive

Thanks.

Mtk

*MaryBeth Keller*

Assistant Chief Immigration Judge

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**From:** Henderson, Suzette M. (EOIR)

**Sent:** Wednesday, February 27, 2013 4:25 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 - Matter of (b) (6)

Good afternoon,

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

R/Suzette Henderson

# Immigration Judge Complaint Intake Form

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

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

complaint source information	
<b>complaint source type</b>	
<input type="checkbox"/> anonymous <input checked="" type="checkbox"/> BIA <input type="checkbox"/> ___ Circuit <input type="checkbox"/> EOIR <input type="checkbox"/> DHS <input type="checkbox"/> Main Justice <input 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: _____	
<b>complaint receipt method</b>	
<input type="checkbox"/> letter <input checked="" type="checkbox"/> IJC memo (BIA) <input 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: _____	
<b>date of complaint source</b> (i.e., date on letter, date of appellate body's decision) BIA referral Memo of 2/27/2013 re: Matter of (b) (6) (b) (6) (BIA 2013)	<b>complaint source contact information</b>
<b>additional complaint source details</b> (i.e., DHS component, media outlet, third party details, A-number) Matter of (b) (6) (BIA 2013)	name: BIA Chairman David Neal _____ address: _____ _____ _____ email: _____ phone: _____ fax: _____

complaint details		
<b>IJ name</b>	<b>base city</b>	<b>ACIJ</b>
(b) (6)		Thomas Y.K. Fong
<b>relevant A-number(s)</b>	<b>date of incident</b>	
A (b) (6)	Hearing 8/14/2012 (b) (6) (b) (6)	
<b>allegations</b>		
<p>Appeal of the IJs discretionary denial of an LPR COR application on a "due process challenge" is affirmed by the BIA. Upon de novo review the BIA found that the record reflected that the R was not afforded a full and fair hearing by the IJ. Specifically, it was noted in the remand that the IJ's "...conduct...suggest...[the IJ]...failed to adhere to the rule of impartiality...[and (b) (6)]...comments suggest that (b) (6) already arrived at certain conclusions regarding respondent's case."</p> <p>The BIA specifically cited conduct and comments made in the Transcript at 103-107, 115-116. <u>Conduct</u> concerns in refusing to sequester R's witnesses after being advised by R's counsel that they would later testify (at 105). <u>Intemperate and injudicious remarks</u> describing R's presentation as a "record based on a sort of 'dog and pony show' (at 106); telling witnesses that "we're looking at somebody who is basically going to dodge a bullet" and had attempted to "mislead the criminal court judges" (at 105); that respondent was "only delaying the inevitable [deportation and removal]" (at 106); and stating prior to the</p>		

Rev. May 2010

end of the hearing (Pre-judgment) that his DUI and tax issues “when you added it all up, he’s coming very close to an denial.” (at 115-116).

The BIA concluded that in the interest of R’s due process rights and a full and fair hearing the case was remanded “before a different Immigration Judge”.

<input checked="" type="checkbox"/> in-court conduct	<input type="checkbox"/> out-of-court conduct	<input checked="" 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: _____				

actions taken		
date	action	initials
2/26/2013	ACIJ held initial discussion with IJ (b) (6) on this matter upon finding the case on the (b) (6) @usdoj.gov BIA Decision Notification-ACIJ internet list. (b) (6) conceded that (b) (6) got upset with the R. as (b) (6) was trying to tell the R. that if he could correct a key adverse factor (false filed tax returns) that is case was meritorious. When R. failed to do so, and in fact filed amended tax returns with even more egregious claims that (b) (6) got upset.	
2/27	ACIJ receives email from the IJConduct Unit referring this matter for review by the ACIJ.	
2/28	Preliminary review completed and IJ Complaint Intake form completed for submission to IJConduct unit.	
3/1	Telephonic discussion scheduled to be held with ACIJ Mary Beth Keller per her email request of 2/28.	
3/7	Discussion held with ACIJ Keller surrounding the specific concerns aired by the CIJ to her on this BIA's ruling.	
3/7	Met with IJ (b) (6) again and we discussed in more detail the remand and words used by the BIA. I pointed out that this remand specifically caught the eye of the CIJ. (b) (6) again readily admitted (b) (6) committed errors in this case and that the BIA's criticism was "wholly valid." (b) (6) conceded, "I screwed up" and "let my being upset go into the record." Along with "my disappointment in wanting to grant this case and being backed into a corner." (i.e. (b) (6) clarified having to deny a COR appl (b) (6) believed should be granted for the sake of his USC child and wife.) Note: this is similar to what (b) (6) stated in (b) (6) transcribed Oral Decision, page 11. (b) (6) stated (b) (6) has learned from this and it has already resulted in changes to pre-decisional statements and inquiries (b) (6) makes, and the wording (b) (6) uses in (b) (6) decisions. Nevertheless, I discussed alternative ways (b) (6) could have accomplished (b) (6) desires to give R the oppty to correct his questionable tax returns. Further I counseled on how and what to avoid in (b) (6) tone, attitude, intemperate remarks and questions of pre-judgment. This IJ clearly accepted (b) (6) committed errors and was receptive to the counseling given.	

# Memorandum



Subject	Date
<i>Matter of</i> (b) (6) (BIA February 22, 2013)	February 27, 2013

To

Brian O'Leary, Chief Immigration Judge

MaryBeth Keller, Assistant Chief Immigration Judge

From

David L. Neal, Chairman

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 February 22, 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

Falls Church, Virginia 22041

File: A (b) (6)

Date: FEB 22 2013

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

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

CHARGE:

Notice: Sec. 237(a)(2)(B)(i), I&N Act [8 U.S.C. § 1227(a)(2)(B)(i)] -  
Convicted of controlled substance violation

APPLICATION: Cancellation of removal under section 240A(a) of the Act

The respondent, a native and citizen of Guatemala, and a lawful permanent resident of the United States since his admission as an immigrant on or about April 1, 1994, has filed a timely appeal of an Immigration Judge's October 9, 2012, decision. In that decision, the Immigration Judge found the respondent removable under section 237(a)(2)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(B)(i), based on his admissions (Tr. at 21) and record of conviction (Exh. 2), as to his 2002 (b) (6) controlled substance offense. In addition, the Immigration Judge denied the respondent's application for cancellation of removal under section 240A(a) of the Act, 8 U.S.C. § 1229b(a), as a matter of discretion. The record will be remanded to the Immigration Court for further proceedings consistent with this opinion and the entry of a new decision.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. See 8 C.F.R. § 1003.1(d)(3)(i); *Matter of R-S-H-*, 23 I&N Dec. 629 (BIA 2003); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). The Board reviews questions of law, discretion, judgment, and all other issues in an appeal from an Immigration Judge's decision de novo. See 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent does not challenge the Immigration Judge's findings as to his removability, and the principal issue before us is an appellate due process challenge to the Immigration Judge's denial of his request for cancellation of removal for lawful permanent residents of the United States under section 240A(a) of the Act, as a matter of discretion.

The United States Court of Appeals for the (b) (6) Circuit, the jurisdiction wherein this case arises recognizes that the Due Process Clause of the Fifth Amendment requires that aliens (b) (6) are provided the right to "a full and fair hearing." See

(b) (6)

(b) (6) An essential part of his right to a full and fair hearing, is the "reasonable opportunity to

(b) (6)



(b) (6)

On de novo review, we find the record does not reflect that the respondent was afforded a full and fair hearing by the Immigration Judge in this case. In reaching this conclusion, we have considered the Immigration Judge's conduct of the proceedings (e.g., refusing to sequester respondent's witnesses after being advised by respondent's counsel that they would be later testifying at the hearing (Tr. at 105)), as well as (b) (6) intemperate and injudicious comments (e.g., describing the respondent's presentation as a "record based on a sort of 'dog and pony show' . . ." (Tr. at 106)), and telling the witnesses with reference to the respondent's prior DUIs that "we're looking at somebody who's basically going to dodge the bullet," implying that the respondent attempted to mislead the criminal court judges with promises to address his alcohol abuse (Tr. at 105); and saying to the respondent that he is only "delaying the inevitable [deportation and removal] for [maybe] 2 years . . . [if] his plan is to go to the court-ordered program for rehabilitation," which the Immigration Judge characterized as "like the ones that didn't work the first two or three times" (Tr. at 106). Furthermore, although the Immigration Judge states "the case isn't over" (Tr. at 106), (b) (6) states, prior to the end of the hearing, that (b) (6) knows the respondent is not a bank robber, but that he has the "DUIs combined with the tax [issues], and when you added it all up, he's coming very close to a denial . . ." (Tr. at 115-16).

As the Board has previously recognized:

Certainly a trial examiner is free to and should interrupt witnesses on occasions when necessary to a clarification of the testimony. But he must be impartial and must not attempt to establish proof to support the position of any party to the controversy; once he does so he becomes an advocate or a participant, thus ceasing to function as an impartial trier of fact and a hearing so conducted is lacking in fundamental fairness required by due process. . . .

*Matter of Lam*, 14 I&N Dec. 168, 170 (BIA 1972) (quoting *Tele-Trip Company v. NLRB*, 340 F.2d 575 (C.A.4, 1965)).

Based on these and other exchanges during the hearing, we find the record suggests that the Immigration Judge failed to adhere to the rule of impartiality assigned to (b) (6) as one acting in a judicial or quasi-judicial capacity. See *Schweiker v. McClure*, 456 U.S. 188, 195 (1982). The Immigration Judge's comments suggest that (b) (6) already arrived at certain conclusions regarding the respondent's case, before all the evidence was presented (Tr. at 103-107, 115-16).

Therefore, under the particular circumstances presented here, and in the interest of ensuring the respondent's due process rights are observed, including his right to a full and fair hearing, we find that a remand for a new hearing on the respondent's application for cancellation of removal is

warranted.<sup>1</sup> We will therefore remand the record to the Immigration Court for a new hearing before a different Immigration Judge, in which both parties shall have the opportunity to present testimony and evidence on any applications for which the respondent is eligible, including an application for cancellation of removal under section 240A(a) of the Act.

Accordingly, the following order will be entered:

ORDER: The record is remanded to the Immigration Court for a new hearing before a different Immigration Judge and for the entry of a new decision.

  
FOR THE BOARD

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<sup>1</sup> In remanding the record for a new hearing, we do not reach the issue whether the respondent ultimately warrants a favorable exercise of discretion on his application for cancellation of removal for lawful permanent residents of the United States.

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

(b) (6)

File: A (b) (6)

October 9, 2012

In the Matter of

(b) (6)

RESPONDENT

)  
) IN REMOVAL PROCEEDINGS  
)  
)

CHARGES: Section 237(a)(2)(B)(i) of the INA, as amended,  
in that respondent who at any time after  
admission has been convicted of any crime  
relating to a controlled substance other than a  
single offense involving possession for one's own  
use of 30 grams or less of marijuana.

APPLICATIONS: Cancellation of removal for certain permanent  
residents.

ON BEHALF OF RESPONDENT: (b) (6)

ON BEHALF OF DHS: (b) (6)

ORAL DECISION OF THE IMMIGRATION JUDGE

On June 27, 2012 the U.S. Department of Homeland  
Security filed a Notice to Appear against the above named  
respondent. The filing of the Notice to Appear vested  
jurisdiction with this Court. The Department of Homeland

Security alleges that respondent is a citizen of Guatemala who became a permanent resident in 1994, that he was convicted for unlawful possession of cocaine in 2002, and on that basis they charge that he is an alien who after admission has been convicted of a controlled substance offense. Respondent appeared in court on or about July 17, admitted the four factual allegations. There was an allegation 4 that was withdrawn. Admitted allegations 1, 2, 3, and 5, and conceded the charge. Based on the pleadings and on Exhibit 2, I do find that respondent is removable from the United States by clear and convincing evidence. Guatemala has been designated as the country of removal and respondent has sought relief in the form of cancellation of removal for certain permanent residents.

#### EVIDENCE AND TESTIMONY

All evidence and testimony has been considered whether or not specifically referenced in this decision. Exhibit 1 is the Notice to Appear. Exhibit 2 is the conviction document underlying allegation 5. Exhibit 3 is an EOIR-42A and associated documents. Exhibit 4, more supplemental documents from respondent. 5, a meeting log. 6, a docket sheet from 1996 evidencing a DUI and possession of a controlled substance charge. Exhibit 7, FBI rap sheet evidencing three DUIs and pertinent controlled substance charges. Exhibit 8, conviction document related to a 212 DUI and controlled substance charge, methamphetamine. 9 is a sheriff's department report evidencing

the facts regarding respondent's recent arrest. 10 are some supplemental documents, including tax returns. 11 are amended tax returns, and 12 are additional AA meeting logs. These were all the documents in the record and they have all been considered whether or not specifically referenced in this decision.

There were three witnesses, the respondent, respondent's wife, and respondent's daughter. In addition to respondent's one daughter he also has a son and a second daughter who would have testified, but much of what they would have said were offered by the three witnesses in the case. All testimony has been considered whether or not specifically referenced in this decision, and as it is already in the record it is not going to be repeated in detail here. Basically, respondent entered the United States in 1982 and today [indiscernible]. He testified that he works in pool construction. He has been doing this for seven years. He has had some classes at (b) (6) Community College. He lives with his wife and three children. All of them are U.S. citizens. He has one daughter who goes to (b) (6) College. She is majoring in marine biology. The son is beginning high school and has asthma and trouble controlling his emotions. His wife is in a number of organizations, Boy Scouts of America. His wife has some health problems also. Respondent testified she had uterine cancer. She did not testify to that. She

testified to other problems.

Respondent's parents are in their 90s. Well, his father is 90 years old, his mother is 87 years old, and they live in Guatemala. Respondent testified his first arrest by the police was in 1996 for DUI and possession of a switchblade, and that DUI involved alcohol. He had a DUI with drugs in 2001. He was arrested for possession of meth in 2009 and another arrest in 2012 for DUI with meth. He says he has had a drug problem since 1996.

With regard to his job, he says he makes \$400 a week and he is paid by check. He said he did not remember if he is paid by check, he said he is paid by cash. Also he works at his apartment building in exchange for rent, he said. The rent would have been \$1,600 a month, except that based on work that they do at the apartments, the rent is provided.

His wife and daughter received food stamps in 1991 and 2002 and for this year, and also for the year he was in jail. He started AA since he has been here. He has not drank alcohol since 2002, he says. There was also some testimony from the wife, as I said, and the daughter. The wife says he has not drank in 13 years and he needs help, and she says that she has arranged a program with (b) (6) in (b) (6) If he is released he will go to (b) (6) and go to (b) (6)

She says he son has severe allergies and asthma and he has had medical problems since he was a baby, and she says that

her oldest daughter is 22 years old and very close to respondent.

There was some specific testimony about whether the witness knew that respondent used drugs. It seemed difficult to believe. And the wife testified that the last time respondent had a driver's license was 10 years ago, and it had been suspended because of a DUI. The wife testified that respondent had been arrested driving the Ford pickup truck that belonged to a friend, and the friend didn't know that respondent has a suspended license. However, respondent's wife testified that they do not work in exchange for rent on the apartment. Owners of the apartment gift them the rent, as they like them.

The daughter testified she is going to college. Her testimony was quite credible. She testified about the problems of the family and that she would be devastated. She says her father has driven this truck several times. Upon further questioning the daughter said that the truck was actually owned by her grandfather. That was witness two's own father. She testified that the vehicle was often kept at the house. It is strange that the second witness did not realize that the truck was owned by her own father. Especially as it turns out the third witness, that's respondent's daughter, that the grandfather died in 2009. The daughter of the owner of the truck testified that the ownership was transferred in 2012.

Again, this is just a brief summary of the testimony.

All testimony has been considered whether or not specifically referenced in this decision.

Now it is important to note that respondent bears the burden of proving that he qualifies for relief from removal, and that is the burden not only of establishing that he is eligible, but also that he is deserving in establish that he is credible, what he says he has done and what he is going to do.

Now to qualify for cancellation of removal for certain permanent residents the respondent must prove that he has been a permanent resident for five years, that he has been present in the United States for seven years after a lawful admission, that he has not been convicted of an aggravated felony, and that he deserves the relief as a matter of discretion. There is really no issue at all with regard to the first three elements, it is really whether respondent deserves the relief as a matter of discretion. In considering this I have to consider under Matter of Marin and Matter of Vicini respondent's residence after obtaining permanent residence in the United States, his father here, his hardship to himself if he is removed, his hardship to his family if he is removed, any service in the U.S. armed forces, a history of steady employment, property or business ties, value and service to the community, and one very significant additional factor, the most significant factor, proof of genuine rehabilitation.

All this is measured against the unfavorable factors,



the nature and circumstances of the removability ground, any additional Immigration law violations, his criminal record, the nature and recency of it, and the seriousness of it. And if it were not for the proof of genuine rehabilitation, this would probably be a very easy case. When looking first at the unfavorable factors, respondent has no violent or dangerous offense, no dangerous beyond what we have with the DUIs. DUIs are obviously very dangerous. We do have a sustained history of DUIs. Respondent has had numerous opportunities to correct his DUIs, but he apparently has not seen fit to do so.

He has got a lot going in the favorable factors. He has been a permanent resident here for almost two decades, and he has been here for almost three decades. His immediate family is here. It would quite a hardship to them if he were removed, quite a hardship to respondent if he were removed. History of employment, we have had some contradictory testimony on that, but he seems to have his own pool business, although again this was contradicted by the wife. He participates in various community activities.

But now we come to proof of genuine rehabilitation. Respondent's gone to some AA meetings, just as he has done before with his other drug offenses and DUIs. So it is hard to give much credence to the AA meeting where he has done these sorts of things before and has not been successful. What I really have to look at is whether respondent has such a record

that shows that he is a changed person, that he is really going to follow our laws in the future, and he is really going to work to be a changed person. And unfortunately, this is the part that I do not really see in this case. Respondent was all too happy to testify that he had a steady job working pool construction until the issue of the taxes came up. Suddenly it was not his truck at all. He was given an opportunity even at the late date before this Court to go file honest tax returns with the IRS, and he came back buried in the record there is amended tax returns here, which gives respondent an even larger amount, which in fact does not declare any of the undeclared income. Instead, he relied on his wife coming in, stating that respondent had never worked. And here I have contradictory testimony between the wife and respondent as to whether he was working during the last seven years. She basically said no, that the time he was arrested was the first time he had worked in three years. He was just driving this friend's truck. It was the friend's business. But then we find out it is really the dead grandfather's truck. So it is difficult to know how the dead grandfather would have been driving that truck with rebar on it building pools during those last three years after which he died. So I tend to think that respondent's testimony is probably the most credible, but he has been working for seven years making the \$400 a week that he said. But again, I am put in a position where I have to determine who is telling the truth

and who is lying. Is it the wife or the husband? And it is the respondent's burden to bring a good record to the Court. It is not the Court's job to sort out contradictory witnesses then they are all the respondent's witnesses.

We have the income from the work at the apartment, which the wife characterized as a gift. The respondent said it was in exchange for work at the apartment. He said the rent would otherwise have been \$1,600 a month, but in exchange for working at the apartment, he gets the rent for free.

Now I have to point out here, I am not really sure what the law is on compensated rent with regard to apartments because there are some regulations that say that you can take the rent not as the income if it is the condition of another job. But the key point here is not what tax law is, it is what the testimony was before this Court. Regardless of what the law was, the testimony was clearly designed to mislead the Court as to the actual state of the facts of the case. And what is worse, I assume that it is really the wife who is not telling the truth here, who is trying to somehow cover over the lack of tax liability by contradicting respondent's assertion that he was working and that he is getting his rent in exchange for free. But note here the wife was also the person who testified largely as to the rehabilitation program that respondent is going to be attending in (b) (6) Respondent drove for 10 years without a license and the whole family knew about it, and

when confronted with the vehicle being parked at this own house during this time, respondent and the wife lied about it. And I do make a very specific adverse credibility finding on this point. I mean, the owner of the truck, the grandfather has been dead for three years. Unfortunately what we are left with is something all too obvious. The criminal record is not all that serious and respondent has a significant amount of equities, but respondent really has no intention of going to rehabilitation in (b) (6) or filing actual tax returns. He will say whatever he has to say to be released from this facility, but then he will be back out there again driving around without a license, picking up more DUIs. And the problem with DUIs is a DUI based on alcohol at least does not bring someone back to this court. In the future all the respondent has to do is structure his plea before the criminal court to be a DUI rather than a drug offense, and he will never come back to this court again. He can continue to drive drunk as many times as he wants, be immunized from any sort of Immigration consequences because DUIs are not a deportable offense. If I had some confidence that respondent would actually go to a rehabilitation program and that we would not be faced with a drunk driver at many junctures on into the future, it would be a different case. But it is just too obvious what we have here.

The witnesses were not credible in this case with regard to his rehabilitation, with regard to whether they are

going to follow the laws of this country, whether he is going to get a driver's license. And unfortunately, because of that the Court is backed into a corner. I would like to grant the case, I really would, but that is not the record that was brought to me. Based on the forgoing, the following orders will enter.

ORDER

Respondent's application for cancellation of removal for certain permanent residents is hereby denied.

Respondent is hereby ordered removed to Guatemala.

(b) (6)

Immigration Judge

1 Q. If you're willing to agree with that.

2 JUDGE TO (b) (6)

3 Q. I think we need to -- can we bring the family in  
4 here?

5 A. Yes.

6 Q. Okay.

7 A. It's just that he's coming from all the way down  
8 there.

9 Q. Okay, that's fine.

10 A. It's a bit difficult. He's also on crutches, so  
11 I know that traveling for him is not very easy.

12 JUDGE TO WITNESSES

13 Q. Okay, do you folks all speak English or do some  
14 of you speak primarily Spanish?

15 A. (Unidentified Female) We only speak English, we  
16 all speak English.

17 Q. Perfect, all right. So we finished with the  
18 testimony of (b) (6) today and we're going to come back on  
19 September 10th at 1 o'clock and we'll hear from some more of  
20 you, all right. Now I don't know what position the Government's  
21 going to end up taking on this. I haven't asked them their  
22 position. They may ultimately be opposing the application and  
23 reserving appeal on this, okay? But I wanted to tell you a  
24 little about what I have to do to make a decision here, okay?  
25 Basically, I have to balance out the good things and the bad

1 things, okay? And the Courts give me a list of things to  
2 consider, you know, how long he's been a permanent resident, his  
3 family, the hardship to him if he's deported, the hardship to  
4 his family if he's deported, any service in the U.S. armed  
5 forces, history of employment, property or business ties, value  
6 and service to the community. And a huge one, proof of genuine  
7 rehabilitation. And against that I have to balance the nature  
8 and circumstances of the removability ground, any criminal law  
9 violations, his overall criminal record, any other Immigration  
10 law violations. That would be like smuggling. That part  
11 doesn't apply to him and things like that. And we look at the  
12 seriousness of the record too. Okay, so you're probably  
13 thinking to yourself, well, this sounds pretty promising, I  
14 mean, he's not a bank robber or a murderer or something like  
15 this. It's not all that serious. But a funny thing happens in  
16 cases like this, okay, because at some point people start  
17 committing so many small crimes over and over again and taking  
18 such a cavalier attitude toward the laws of this country that it  
19 starts becoming serious, okay? So for example, I don't know if  
20 you've noticed this, but over 25 percent of his three decades in  
21 the United States have been spent either on probation or in  
22 classes. And maybe there's been some overlap and it's not quite  
23 25 percent. But let's say it's only 20 percent. That's still a  
24 lot of time, don't you think, really, for three decades? Kind  
25 of adds up there, doesn't it? Okay. We went over his taxes.

1 Apparently a lot of income not declared on the taxes, and we  
2 asked him about that, and he pretty firmly committed to an  
3 amount of \$52,000 worth of income, almost \$52,900 worth of  
4 income, almost 53,000. But then when he realized that we were  
5 sort of pinning him down to an income level, the income from his  
6 job started dropping like, well, you know, wasn't quite that  
7 much. Okay.

8 (b) (6) TO JUDGE

9 Q. Your Honor, are we off the record?

10 A. We're on the record, ma'am.

11 Q. Well, Your Honor, some of these people are going  
12 to be witnesses.

13 A. They're going to come back and they're going to  
14 be telling us about this.

15 Q. I would ask that basically they don't get the  
16 benefit of an assessment of the content --

17 A. Okay, well, they're going to have to come back.  
18 Okay, I understand, ma'am. Thank you, okay.

19 JUDGE TO WITNESSES

20 Q. So again, some more laws that aren't taken too  
21 seriously. And he promises this time that it's not going to  
22 happen again. Don't you think he told the criminal Judges that  
23 with his first four DUIs, that it wasn't going to happen again?  
24 So we're looking at somebody who's basically going to dodge the  
25 bullet. But you know, these waivers aren't really helpful for



1 somebody like that, because what they do is they dodge the  
2 bullet today and they say I won my case, whoopee, and then  
3 they're back here again in two year's time, and then there's no  
4 waiver available and then I order them deported, okay? And in  
5 those two years maybe they've gotten into a hit and run. But  
6 certainly they could have gotten a two-year head start on their  
7 new life back in their home country, right? I mean, you're just  
8 delaying the inevitable for two years if you don't really have a  
9 plan. And we talked to him, and his plan is to go to the court-  
10 ordered program for rehabilitation. Those are like the ones  
11 that didn't work the first two or three times. He's going to go  
12 back to those. Okay, so I think you can see there's some pretty  
13 big cracks in the façade here, right? We're going to come back  
14 on September 10th. The case isn't over. The record that you  
15 present during this case is the record you have for the  
16 decision, okay? If you want me to make a decision with the  
17 taxes in the order they're in and the rehabilitation program and  
18 the order that it's in, basically a record based on sort of a  
19 dog and pony show, I can do that. But you may not like the  
20 decision that I make, and even if you do, the Government  
21 probably isn't going to like it and they'll probably appeal it.  
22 So between now and the 10th I would encourage you to coordinate  
23 with (b) (6) to address some of the issues that the Court  
24 certainly has, and that are certainly going to be raised on the  
25 10th. Now the Government Attorney didn't want me to talk to you

1 about this. I mean, we could go through a hearing with you  
2 testifying and then raise these issues and take additional  
3 continuances. I think that's a waste of everyone's time. I  
4 think there's some issues that have to be addressed if there's  
5 any reasonable chance of (b) (6) succeeding on this case.  
6 Do you folks understand what I'm trying to say?

7 A. (No audible response.)

8 Q. Okay.

9 JUDGE TO (b) (6)

10 Q. (b) (6) I'm sure you understand what I'm  
11 trying to say, sir.

12 A. Yes, Your Honor.

13 Q. Okay.

14 JUDGE TO (b) (6)

15 Q. So (b) (6) sir, we're going to see you back  
16 here on September 10th at 1 o'clock, okay?

17 (b) (6) TO JUDGE

18 Q. Your Honor, one last thing for the record.

19 A. Yes.

20 Q. We are submitting his brother's declaration as an  
21 offer of proof.

22 A. That's fine, an offer of proof, and that's been  
23 accepted by the Government, yes, okay, all right. We'll see the  
24 parties back here on that date. Thank you.

25 Q. Thank you, Your Honor.

1 A. Right.

2 Q. There's a lot of income that's not reported, is  
3 what I'm trying to say.

4 A. I mean, I was able to clear that up with her with  
5 respect to the exchange of income for the housing. Her  
6 understanding is according to what she's been advised is that  
7 it's not income. Whether that's a correct advisement, I'm not a  
8 tax preparer. Whether amending the tax is based upon what he  
9 said in court, quite frankly, that is not an issue that I had  
10 visited with her because I know that she couldn't amend them  
11 without his authorization. I can inquire with her if that is  
12 something that they have addressed if I could have a minute.

13 Q. Okay. I mean, I'll let you discuss it, but they  
14 have to decide what it is that they want to do.

15 A. I understand.

16 Q. Because I'm going to move forward to a decision  
17 based on the record that I have.

18 A. I understand.

19 Q. I understand, you know, they're looking at this  
20 and they may have done this for quite some time and wondering  
21 why is it really necessary to do this. But I mean, in the end,  
22 you know, I'm looking at the record that I'm looking. I'm  
23 thinking like, well, it just seems that, I mean, I know he's not  
24 a bank robber. But on the other hand, he's really not, we have  
25 a lot of these sorts of violations, the DUIs combined with the

1 taxes, and when you add it all up, he's really coming very close  
2 to a denial. So I don't know how you want to handle it.

3 A. If I could have a minute, Your Honor, I'll review  
4 that with them and --

5 Q. And I can give you 15, 20 minutes. The other  
6 case apparently bonded out so we have, you know, plenty of time  
7 today.

8 A. I'll just review it, if I could have 15 minutes,  
9 Your Honor, talk with him and talk with his boss right now.

10 Q. Sure, why don't we take like 15 minutes then and  
11 come back at 10 minutes until, all right?

12 (OFF THE RECORD)

13 (ON THE RECORD)

14 JUDGE TO (b) (6)

15 Q. So (b) (6) what did you want to do, sir?

16 A. Your Honor, I spoke with the respondent's spouse  
17 off the record, and I spoke with respondent also. But she would  
18 like to take the step then to speak to the tax preparer who  
19 prepared all these taxes and see about what issues that he  
20 exactly addressed and have him amend it whatever way he sees  
21 fit.

22 Q. Okay.

23 A. So basically, it'd be a continuance.

24 Q. Okay, that's fine. I'll be happy to give you a  
25 continuance. How much time did you need, sir?

1           A.    I would say three weeks, Your Honor.

2           Q.    Okay. Do you want to set it for like a continued

3 hearing or a master calendar, sir?

4           A.    Why don't we do a master, Judge?

5           Q.    Okay.

6           A.    That way we don't keep taking up the Court's

7 docket.

8           Q.    Okay. How about September 26th at 1 o'clock?

9           A.    I should be able to work it out, that should be

10 fine, Your Honor.

11 (b) (6) TO JUDGE

12           Q.    Your Honor, I'm going to try my best to be

13 available, but I'm not 100 percent sure about the scheduling if

14 that can be changed and arranged for myself. But since it's a

15 master, I imagine I don't have to be present. Is that correct?

16           A.    It's a master, that's right. Okay.

17 (b) (6) TO JUDGE

18           Q.    Your Honor, I had those attendance logs. Can I

19 submit them?

20           A.    That's fine.

21           Q.    Or take them at the next one?

22           A.    Okay.

23 JUDGE TO (b) (6)

24           Q.    (b) (6), sir, I'm going to give your attorney

25 the continuance, okay? But let me just sort of explain it as