



Detail

Complaint Number: 771

Immigration Judge: (b)(6)

Complaint Received Date: 06/11/13

Current ACIJ
Nadkarni, Deepali

Base City
(b)(6)

Status
CLOSED

Final Action
Oral counseling

Final Action Date
08/22/13

Past ACIJ(s):

A-Numbers(s)	Complaint Nature(s)	Complaint Source(s)
(b)(6)	Due process In-court conduct Legal	Respondent Atty (b)(6)
		(b)(6)

Complaint Narrative: IJ violated law of the case doctrine. IJ engaged in angry tirade v atty.

Complaint History

06/20/13 Database entry created

08/22/13 Oral counseling

Immigration Judge Complaint Intake Form

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

Date Received at OCIJ: 6.11.13

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

complaint details		
IJ name	base city	ACIJ
(b) (6)		
relevant A-number(s)	date of incident	
A (b) (6)	6.11.13	
allegations		
- IJ violated law of the case doctrine - IJ engaged in angry tirade v. atty.		
nature of complaint		
<input checked="" type="checkbox"/> in-court conduct <input type="checkbox"/> out-of-court conduct <input checked="" 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: _____		

Moutinho, Deborah (EOIR)

From: (b) (6) >
Sent: Tuesday, June 11, 2013 3:34 PM
To: IJConduct, EOIR (EOIR)
Subject: Ij--(b) (6)

Yesterday I appeared in Court for a hearing on the merits of my client's withholding only application. I am filing a motion to reconsider before the judge today but I know from (b) (6) conduct yesterday that (b) (6) will not act properly in this matter. Violating the law of the case doctrine adopted by Chief Judge Creppy, see his October 9, 2001 memo, the newly assigned judge reversed the findings of the prior IJ, Hon. (b) (6) and ordered my client removed to a country where she is in fear for her life. Our expert witness was never permitted to testify and rather than to conduct the hearing on the merits, for no reason, the IJ chose to substitute (b) (6) own judgment for that of the former judge. (b) (6) acted in bad faith and abused (b) (6) discretion and failed to act impartially, to the extent to refusing to allow review by the BIA of (b) (6) arbitrary decision to relitigate the whole case and completely cast aside the record existing in the case. I am serving the Chief Immigration Judge via federal express a copy of the motion now being filed to reconsider before the same judge. I expect the same and worse than yesterday. I intend to pursue federal court action in this matter. My client has endured 7 months in detention because she possesses a genuine fear of returning to Mexico.

This judge is not capable of being fair and should be disciplined for (b) (6) actions in this case.

Moutinho, Deborah (EOIR)

From: (b) (6) >
Sent: Tuesday, June 11, 2013 4:21 PM
To: IJConduct, EOIR (EOIR)
Subject: Ij-- (b) (6)
Attachments: CCF06112013_0002.pdf, OPPM00-01.pdf

A previous complaint was filed by counsel without the A#, The A# for that complaint is A (b) (6)

This complaint refers to A# (b) (6)

During a Master hearing conducted June 11, 2013 Judge (b) (6) improperly warned Respondent, (b) (6) that her choice of counsel would adversely affect the outcome of her asylum case. This statement was a very emotional, angry response to counsels request to be excused and that it had been a pleasure, this minor courtesy resulted in a tirade by the judge and (b) (6) angry attempt to interfere with the attorney client relationship.

(b) (6) was the assistant chief counsel and (b) (6) the court clerk. I have not spoken with either one regarding this complaint but both would certainly vouch for the fact that there was no cause for the judge's tirade and attempt to damage counsels reputation.

(b) (6)

Please note that our email address has changed. Our new email address is (b) (6).

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF THE IMMIGRATION APPEALS
FALLS CHURCH, VIRGINIA**

IN THE MATTER OF:

(b) (6)

RESPONDENT

FILE NO: A(b) (6)

)
)
) **SUMMARY IN SUPPORT OF**
) **EMERGENCY STAY**
)
)
)
)
)
)

TO THE HONORABLE MEMBERS OF THE BOARD:

SUMMARY IN SUPPORT OF EMERGENCY STAY

I certify that in this the 11th day of June, 2013, I served opposing counsel with a true and correct copy of the foregoing Summary in Support of Emergency Stay by Courier Delivery to:

(b) (6)

(b) (6)

I certify that in this the 11th day of June, 2013, I served opposing counsel with a true and correct copy of the foregoing Summary in Support of Emergency Stay by FedEx to:

Brian O'Leary
Chief
5107 Lusburg Pike, Suite 2500
Falls Church, Virginia 22041

(b) (6)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
FALS CHURCH, VIRGINIA

IN THE MATTER OF:

(b) (6)
RESPONDENT/APPLICANT

FILE NO: A (b) (6)

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§ SUMMARY IN SUPPORT OF EMERGENCY STAY

TO THE HONORABLE MEMBERS OF THE BOARD:

(b) (6) is currently detained in the custody of Immigration & Customs Enforcement, "ICE." She has been detained in (b) (6) for seven (7) months. Her removal from the United States is imminent following an order of removal issued by Judge (b) (6) on June 10, 2013.

The matter was initially before the Honorable (b) (6) immigration judge. (b) (6) had a "reasonable fear" interview in February, 2013, after approximately 4 months in custody. The interview was conducted primarily without counsel's participation, which had been requested from the inception of this case.

The interviewer questioned (b) (6) regarding her husband's asylum application filed in 2001 and prepared by (b) (6) an attorney who has had numerous disciplinary problems with the State Bar of (b) (6). She denied that (b) (6) had established a "credible fear" based on discrepancies between her descriptions of events described in that application in 2001. A hearing on the merits was conducted before the Honorable (b) (6) in 2001, at which (b) (6) represented (b) (6). An appeal was taken by (b) (6) on behalf of (b) (6) was deported in 2008 and only then did she learn that the appeal had been denied in her husband's asylum case.

Upon her return to Mexico, (b) (6) was kidnapped by members of the Zetas organized criminal organization. She was kept by these Zetas, subjected to severe mistreatment and forced to witness the rape and torture of other kidnapped victims held by the Zetas in one of their many secret locations. Ample documentation is contained in the record and establishes that this is a group which the Mexican government is unable to control. Given the extensive infiltration by the Zetas into Mexican law enforcement, there is an unwillingness to control the group as well.

On February 26, 2013, the Honorable (b) (6) vacated (b) (6) prior order affirming the finding of "no credible fear" by the interviewing officer. Based on the documentation submitted in support of the Motion to Vacate, the Honorable (b) (6) found that (b) (6)

(b) (6) had, in fact, established a "credible fear" of returning to Mexico and scheduled a hearing to permit (b) (6) to file her application for withholding of removal in open court.

On May 29, 2013, the I-589, Application for Withholding of Removal, was filed in open court and a hearing on the merits of the withholding application scheduled for June 10, 2013, a date after the (b) (6) of the Honorable (b) (6). The case was assigned to another Immigration Judge, (b) (6).

At the June 10, 2013 hearing, instead of conducting a hearing on the merits, Judge (b) (6) began by taking a break to familiarize herself with the record in the case. The DHS attorney, (b) (6), provided the judge with copies of both prior orders of the Honorable (b) (6), (b) (6) which (b) (6) clearly had not been aware of or had ignored. These were faxed to the Court during one of the breaks in this case. The IJ, (b) (6), referred to these orders as "administrative error" and thus found that (b) (6) had authority to vacate those orders and substitute (b) (6) own judgment (in a case (b) (6) was new to) for that of the Honorable (b) (6). (b) (6) had retained the services of a psychologist, (b) (6) whose expert assessment of (b) (6) and curriculum Vitae is attached hereto.

At no time did the DHS attorney, (b) (6), advance the argument that (b) (6) should be denied her hearing and the orders of the Honorable (b) (6) ignored. It was exclusively the actions of the judge (b) (6) acting in a prosecutorial capacity and contrary to the "law of the case doctrine" which has resulted in this travesty. See attached Memo [OPPM 01-02], Creppy IJ, EOIR (Oct. 9, 2001), *reprinted in 79 No. 3 Interpreter Releases* 66, 84-88 (Jan. 14, 2002). The Executive Office for Immigration Review has adopted this doctrine:

Transfer of the case to a new Immigration Judge does not mean that all matters should be relitigated. *Zhang v. Gonzales*, 421 F.3d 453 (7th Cir. 2006) [absent exceptional circumstances, such as a change in the law, new evidence, or compelling circumstances, a new judge assigned to a case should not make inconsistent rulings to the prior IJ based merely on differing impressions of credibility.

Where first IJ reopened *in absentia* order and second IJ reversed the first IJ, the second IJ abused his discretion because there was evidence of lack of notice and litigants have a "right to expect that a change in judges will not mean going back to square one." *Ko v. Gonzales*, 421 F.3d 453 (7th Cir. 2005).

The United States Supreme Court has "long-recognized that combining the roles of prosecutor and adjudicator in a single entity of a recipe for fundamentally unfair and erroneous decision-making. See *Schweiker v. McClure*, 456 U.S. 188, 195 (1982).

After vacating the orders of the prior judge, Judge (b) (6) refused to follow the law of the case and overturning the findings of the prior judge, found that (b) (6) had NOT established a credible fear and refused to conduct a hearing on the merits of the withholding claim, telling counsel to tell her expert witness "whatever you need to." The judge further refused to allow an appeal from (b) (6) decision.

Counsel asserts that the actions of the subsequent judge violate policy and regulations in place as well as violating (b) (6) basic due process rights and fundamental concepts of fairness. All parties appeared in court for a hearing on the merits. It was the expectation based on the orders of the Honorable (b) (6) that a hearing on the application filed May 29 in open court, would be heard on its merits June 10, 2013. Judge (b) (6) violated the rights of (b) (6) and international law by ordering her return to a country where her life and freedom are threatened. In order to reach this conclusion, the judge engaged in unethical conduct but this issue is not being addressed at this time.

The relief sought is an emergency stay to permit (b) (6) to pursue federal court action and to undo this grave injustice.

Respectfully Submitted,

(b) (6)

Moutinho, Deborah (EOIR)

From: Nadkarni, Deepali (EOIR)
Sent: Thursday, August 22, 2013 12:27 PM
To: Moutinho, Deborah (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: FW: IJ -- (b) (6)

Please close this out (you should have the intake form; let me know if not) as concluded with lengthy and severe oral counseling on August 22, 2013. Thanks. d

Dee Nadkarni
Assistant Chief Immigration Judge
703.305.1247

From: IJConduct, EOIR (EOIR)
Sent: Monday, June 24, 2013 8:18 AM
To: Nadkarni, Deepali (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: FW: IJ -- (b) (6)

FYI

From: (b) (6)
Sent: Wednesday, June 12, 2013 11:33 AM
To: IJConduct, EOIR (EOIR)
Subject: IJ -- (b) (6)

Dear Hon. Brian O'Leary:

This to further detail the misconduct of the referenced judge. I did not file a motion to reconsider with the judge in the matter (b) (6). My client is suffering from PTSD, well documented in the record. She has been detained for 7 months. I have taken instead an appeal from the decision. I wanted to correct this from the information given in my initial complaint.

On Monday, before addressing the issues in the case, A (b) (6) Judge (b) (6) took exaggerated offense at my referring to the prior immigration judge as (b) (6). I am uncertain as to whether this is on the record. I believe that it is. The judge lectured me about what I may call a judge or former judge in the courtroom and on the street. I was trained with both (b) (6) and (b) (6). I have socialized with both. I meant no disrespect to either one. I have the highest regard for them both. (b) (6) said I had acted as though they were colleagues of mine, which, of course, they were at one time. Both attended the same law school I did as well. Then the same judge who had taken offense at my referring to (b) (6) by (b) (6) full name, proceeded to completely disregard (b) (6) orders in the case by calling them "administrative errors." It was in this manner that (b) (6) attempted to eliminate review of (b) (6) arbitrary decision by denying access to the BIA.

On Tuesday, the judge went even further. (b) (6) actually told my 20 year-old client that she could expect a negative result because of her choice of attorney. I have never filed a complaint against an immigration judge. I have practiced law for some 28 years. I am in good standing with the State Bar of (b) (6) and have no disciplinary history. It is unfortunate that I have been forced to make these complaints because the judge actually, on the record in A (b) (6) said that I needed to inform clients in (b) (6) court that I could not get a fair hearing in (b) (6) court, that I had problems in (b) (6) court. This is completely unwarranted and an intentional interference with my practice, professional reputation and livelihood. I am a single mother and mother of a heart patient. I have never had a personal relationship or any other negative contact or communication with this judge. I am completely baffled by (b) (6) personal insults and threats. I will enumerate below all of

the rules I believe to have been violated by this judge in (b) (6) conduct during both hearings. I have not filed a complaint with the state bar or OPR.

I believe that Judge (b) (6) should be recused from hearing any case in which I am the attorney. It is (b) (6) who has expressed animosity without provocation and has threatened to deny the case solely because of my being the attorney of record. See *Matter of Exame*, 18 I&N Dec. 303 (BIA 1982), citing "the due process requirement that the hearing be before a fair and impartial arbiter." The IJ clearly has a personal rather than judicial bias as manifested in (b) (6) gratuitous comments on the record in A (b) (6). The judge yelled for counsel to turn back after opening the courtroom door to exit, through the interpreter told the client that she should discuss with her parents (who are not in the U.S.) the fact that her attorney could result in an adverse decision in her case. Previously on the record, counsel had noted the "law of the case doctrine" because the judge had again attempted to relitigate issues already resolved in favor of the respondents in these cases. All of this is contained in the record and shows that at no time was counsel disrespectful but merely providing quality representation to both these clients.

This judge has engaged in such "pervasive bias and prejudice" as shown by (b) (6) judicial conduct. See record in both these cases. My 13 year-old daughter was in the courtroom during A (b) (6). Judge (b) (6) was so angry and out of control that (b) (6) demanded to know whether "they" spoke English. (b) (6) did not even seem to realize that I only represented one individual that day. Then (b) (6) used the court interpreter and recording equipment to make (b) (6) threats from the bench.

All of these fall within the purview of 28 U.S.C. § 144, 455. Section 455 requires that a judge recuse (b) (6) placing the duty on the judge to disqualify (b) (6). This is consistent with 8 C.F.R. § 1240.1(b). Standards for disqualification must be liberally applied. *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847 (1988); (b) (6). 28 U.S.C. § 455 eliminated the doctrine that a judge had a "duty" to hear a case. I am reluctant to have to ask for this extraordinary remedy given the complications of court scheduling. But I must do this to preserve my clients rights, my reputation and livelihood.

Counsel will be filing a motion for recusal. It must be heard by another judge. *Berger v. U.S.*, 255 U.S. 22 (1921). There is no doubt that the code of judicial conduct applies to immigration judges. See (b) (6)

(b) (6)

(b) (6) *Matter of Chocallo*, 2 MSPB 20 (1980).

The court's conduct towards counsel may be grounds for recusal. (b) (6)

(b) (6) In both cases the government never put forth the arguments being proposed by the judge. (b) (6) took on the role of prosecutor in both instances, with no participation from the DHS attorneys in that regard. IJ's have a responsibility to act as neutral and impartial arbiters and (b) (6)

(b) (6); *Schweiker v. McClure*, 456 U.S. 188, 195 (1982). The U.S. Supreme Court has held that due process demands impartiality on the parts of those who function in a judicial capacity or quasi-judicial capacity. *Id.* Where the IJ appears to have decided a case before hearing all of the testimony, the case should be remanded and a new judge assigned to hear the case. See (b) (6)

(b) (6) Where the judge took over the questioning, as (b) (6) did in A (b) (6) did not act as a neutral fact-finder, and engaged in a stream of nonjudicious and snide remarks demonstrating hostility, due process was violated.

The Attorney General has issued a directive to improve the manner in which IJ's conduct themselves on the bench in light of substantial concerns raised by the press and the public. Memo, Rooney, Director, EOIR Apr. 2007). On Monday, in (b) (6) the judge (b) (6) (b) (6) See (b) (6) vacating and remanding IJ's denial of asylum (b) (6) (b) (6) This clearly

occurred in connection with A (b) (6)

I reserve the right to supplement these complaints with additional authority and enumeration of the violations of due process, judicial decorum and fairness by Judge (b) (6) when I have received the transcripts and recordings which I have requested of the Court. (b) (6) was a particularly vulnerable applicant, suffering from PTSD and 7 months of incarceration. (b) (6) an unaccompanied minor is another particularly vulnerable applicant. The totality of the circumstances test should be applied to (b) (6) conduct in both these matters. It is a Halmark of the American system of justice that anyone who appears as a litigant in an American courtroom is treated with dignity and respect. That expectation must be met. (b) (6)

(b) (6)

(b) (6) Like (b) (6) comments in these instances, the Court found that the IJ's comments were so intemperate the court suggested a different IJ on remand because "justice must satisfy the appearance of justice" and there is a need to ensure fairness and satisfy the appearance of impartiality. The exclusion of (b) (6) expert was a result of the IJ's animosity, voiding of prior orders and an egregious violation of due process. It also frazzled (b) (6) who expected to have her expert testify. Courts have applied to totality of the circumstances test, finding misconduct where the judge asked many more questions than the government attorney, which occurred in both these instances. Preclusions of the applications were put forth by the IJ, newly assigned to the cases, and without the government's input. See (b) (6)

(b) (6)

In both these cases the IJ impeded both respondents from having a full and fair opportunity to present their claims. On the contrary, both these applicants had litigated the issues then decided anew and adversely by the IJ due to her own hostility and lack of impartiality and professionalism.

Thank you for your time. I can be reached at (b) (6)