



## Detail

Complaint Number: 774

Immigration Judge: (b)(6)

Complaint Received Date: 06/25/13

Current ACIJ  
Dufresne, Jill H.

Base City  
(b)(6)

Status  
CLOSED

Final Action  
Complaint dismissed due to the  
complainant's failure to state a  
claim

Final Action Date  
07/08/13

### Past ACIJ:

A-Numbers(s)	Complaint Nature(s)	Complaint Source(s)
(b)(6)	Legal	BIA

Complaint Narrative: (b)(6) Judge certified a remanded decision back to the BIA

### Complaint History

06/25/13 Complaint referred to ACIJ  
06/26/13 Database entry created  
07/08/13 Complaint dismissed due to the complainant's failure to state a claim

Sep 11, 2013

1 of 1



# Memorandum

Subject	Date
(b) (6) (BIA June 21, 2013)	June 25, 2013

To

Brian O'Leary, Chief Immigration Judge

MaryBeth Keller, Assistant Chief Immigration Judge

From

David L. Neal, Chairman

Attached please find a copy of the Board's decision dated June 21, 2013, and relevant portions of the record in the above-referenced matter.

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



**U.S. Department of Justice**

**Executive Office for Immigration Review**

*Board of Immigration Appeals  
Office of the Clerk*

5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041

**(b) (6)**

**DHS/ICE Office of Chief Counsel -**

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

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

**Name:** **(b) (6)**

**A** **(b) (6)**

**Date of this notice: 6/21/2013**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Kendall-Clark, Molly  
Adkins-Blanch, Charles K.  
Miller, Neil P.

**Lulseges**  
**Userteam: Docket**

*WJ*

Falls Church, Virginia 22041

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File: A (b) (6)

Date:

JUN 21 2013

In re: (b) (6)

IN REMOVAL PROCEEDINGS

CERTIFICATION

ON BEHALF OF RESPONDENT: Pro se

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

APPLICATION: Cancellation of removal under section 240A(b)(1) of the Act

This matter was last before the Board when, on June 24, 2010, we determined in a unanimous three-member opinion that the respondent, a native and citizen of Mexico, warranted cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1), and remanded the record to the Immigration Judge for the completion of the required background checks. *See Matter of M-D-*, 24 I&N Dec. 138 (BIA 2007). On remand, the Immigration Judge declined to effectuate the mandate of this Board's decision. Instead, (b)(6) certified the record back to the Board in light of the decision of the United States Court of Appeals for the (b) (6)

We decline to accept the matter on certification. 8 C.F.R. § 1003.7. While the decision in (b) (6) stands for the proposition that, in some circumstances, an alien cannot seek judicial review of a Board's holding that she lacks good moral character, the ability of this Board to enter a holding that is not subject to judicial review does not provide a basis to disturb our prior holding that the respondent merits cancellation of removal. We will remand this case for the Immigration Judge to comply with our previous decision. Accordingly, the following orders are entered.

ORDER: The Board declines to accept this matter on certification.

FURTHER ORDER: As ordered in this Board's prior decision, dated June 24, 2010, pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).

  
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FOR THE BOARD

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

(b) (6)

File No.: A (b) (6)

November 10, 2011

In the Matter of

(b) (6)

Respondent

)  
)  
)  
)  
)

IN REMOVAL PROCEEDINGS

CHARGE: Section 212(a)(6)(A)(i) of the INA - present  
without being admitted or paroled.

APPLICATIONS: Section 240A(b)(1) of the INA - cancellation of  
removal for non-permanent resident aliens.

ON BEHALF OF RESPONDENT:

(b) (6)

ON BEHALF OF DHS:

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

ORAL DECISION OF THE IMMIGRATION JUDGE

CERTIFICATION

The respondent is a 23-year-old single respondent who had a removal hearing before this Judge on September 2, 2008. During that hearing, this Court denied the respondent's application for cancellation of removal under Section 240A(b)(1) of the Act and also denied voluntary departure in the exercise of discretion based on an April 17, 2007, car accident which resulted in a woman suffering from personal injuries, including being comatose

for two months and suffering a leg injury. As a result of this offense for which the respondent was responsible for, she was convicted of aggravated driving under the influence and sentenced to two years in prison. Her sentence was vacated but ultimately she did spend 172 days in jail and a portion of her bond money was allocated to the victim's expenses.

Because of the gravity of that accident and the threat to the community, this Judge denied the respondent's case despite the fact that she was a single parent who had a son who suffers from a physical ailment, in addition to other family members who have been in the United States and were supportive of the respondent.

Since the Board has sustained the appeal on June 24, 2010, the (b) (6) Circuit Court of Appeals, through a decision entitled (b) (6)

(b) (6) it is clear to this Court that the BIA is empowered and has the authority to sustain a denial of a case based on the lack of good moral character. In its decision, the (b) (6) Circuit sustained the denial of good moral character because the petitioner had a conviction for traffic offenses, including drunk driving offenses, one a felony version of that crime given that respondent's recidivism. In that case, the Court recognized that good moral character is not technically defined by the Act and it is a discretionary matter left to the Board. Given the respondent's serious accident, the respondent

does not know what happened to the victim despite the victim being comatose after two years, this Judge will certify the matter back to the Board of Immigration Appeals for reconsideration.

The regulations at 8 C.F.R. 1003.7 do require that the parties be informed of the certification and if either party desires to submit a brief, that party will have an opportunity to submit a brief to the Board within the time prescribed in 8 C.F.R. 1003.3(c).

On this basis, this Judge certifies the matter back to the Board for reconsideration of its decision dated June 24, 2010, given the Circuit's decision in (b) (6)

Date: November 10, 2011

(b) (6)

United States 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.

  
\_\_\_\_\_  
Kristen J. Bellotti, Transcriber  
Free State Reporting, Inc.

January 4, 2012  
(completion date)

By submission of this CERTIFICATE PAGE, the Contractor certifies  
that a Sony BEC/T-147, 4-channel transcriber or equivalent, and/or  
CD, as described in Section C, paragraph C.3.3.2 of the contract,  
was used to transcribe the Record of Proceeding shown in the above  
paragraph.



# Immigration Judge Complaint Intake Form

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

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

complaint source information	
complaint source type	
<input type="checkbox"/> anonymous <input type="checkbox"/> respondent's attorney <input checked="" type="checkbox"/> third party (e.g., relative, uninterested attorney, courtroom observer, etc.) <input type="checkbox"/> other: _____	<input checked="" type="checkbox"/> BIA <input type="checkbox"/> respondent <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 type="checkbox"/> fax	<input checked="" type="checkbox"/> IJC memo (BIA) <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
11/1	name: <u>DAVID NEAL</u> address: <u>Chair, BIA</u> email: _____ phone: _____ fax: _____
additional complaint source details (i.e., DHS component, media outlet, third party details, A-number)	

complaint details	
IJ name	base city
(b) (6)	
relevant A-number(s)	date of incident
(b) (6)	11/10/11
allegations	

*Judge (b) (6) certified a remanded decision back to the BIA.*

☐ incapacity

*X other: Disregard BIA remand*

**Actions for processing complaints against IJs**  
(actions in blue are possible resolutions)

**(b) (6)**

<b>Initial Processing</b>
<ul style="list-style-type: none"> <li>• source initiated communication</li> <li>• EOIR received communication from source</li> <li>• EOIR sent communication to source</li> <li>• EOIR requested additional information from source</li> <li>• additional information requested from source was received at EOIR</li> <li>• complaint referred to ACIJ</li> <li>• complaint re-opened</li> <li>• alleged conduct occurred</li> <li>• OCIJ consulting with ELR</li> </ul>

<b>OPR/OIG Processing</b>	
<b>OPR Processing</b>	<b>OIG Processing</b>
<ul style="list-style-type: none"> <li>• complaint referred to OPR</li> <li>• OPR declined to investigate or closed without further action</li> <li>• OPR finding <ul style="list-style-type: none"> <li>◦ professional misconduct (intentional, reckless disregard)</li> <li>◦ no professional misconduct (poor judgment, mistake, IJ acted appropriately)</li> </ul> </li> <li>• OPR recommendation <ul style="list-style-type: none"> <li>◦ recommended discipline</li> <li>◦ other – [details]</li> </ul> </li> <li>• OPR action referred to ACIJ</li> </ul>	<ul style="list-style-type: none"> <li>• complaint referred to OIG</li> <li>• OIG referred complaint back to EOIR for management action</li> <li>• OIG issued report</li> <li>• other OIG action – [details]</li> <li>• OIG action referred to ACIJ</li> </ul>

<b>Complaint Dismissed or Concluded</b>		
<b>Complaint Dismissed</b>	<b>Complaint Concluded</b>	<b>Other</b>
<ul style="list-style-type: none"> <li>• frivolous</li> <li>• merits-related</li> <li>• allegations disproven</li> <li>• allegations cannot be substantiated</li> <li>• failure to state a claim</li> </ul>	<ul style="list-style-type: none"> <li>• corrective action already taken</li> <li>• intervening event made action unnecessary (IJ termination, IJ termination during trial period, IJ resignation, IJ retirement, other)</li> </ul>	<ul style="list-style-type: none"> <li>• merged into another complaint</li> <li>• resolved per another complaint</li> </ul>

<b>Management Action</b>	
<b>Corrective Action</b>	<b>Disciplinary Action</b>
<ul style="list-style-type: none"> <li>• oral counseling</li> <li>• written counseling</li> <li>• training</li> <li>• performance-based action (PIP)</li> <li>• other – [details]</li> <li>• corrective action occurred date(s)</li> </ul>	<ul style="list-style-type: none"> <li>• discipline proposal (suspension, removal, other)</li> <li>• discipline decision (reprimand, suspension, removal, other)</li> <li>• discipline imposed date(s)</li> </ul>

<b>Subsequent Action</b>
<ul style="list-style-type: none"> <li>• challenge filed (grievance, arbitration, EEOC, MSPB, other)</li> <li>• subsequent decision (reversed, upheld, mitigated)</li> <li>• subsequent decision imposed date(s)</li> </ul>

<b>Miscellaneous Action</b>
<ul style="list-style-type: none"> <li>• none of the above – [details]</li> </ul>

Rev. May 2010

