



## Detail

Complaint Number: 708

Immigration Judge: (b)(6)

Complaint Received Date: 01/02/13

Current ACIJ  
Davis, John W.

Base City  
(b) (6)

Status  
CLOSED

Final Action  
Complaint concluded --  
corrective action already taken

Final Action Date  
01/03/13

### Past ACIS:

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

**Complaint Narrative:** The matter was remanded by the Board back to the ij in October 2009, the sole issue was whether the respondent's motion to reconsider was properly denied. Despite this direction from the Board the ij stated that [REDACTED] stood by [REDACTED] decision which was subject of the remand.

### Complaint History

01/03/13	Complaint concluded -- corrective action already taken
01/03/13	Complaint referred to ACIJ
01/03/13	Matter will be addressed as part of [REDACTED] PIP
01/09/13	Database entry created

**Moutinho, Deborah (EOIR)**

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**From:** Davis, John (EOIR)  
**Sent:** Thursday, January 03, 2013 12:40 PM  
**To:** Moutinho, Deborah (EOIR)  
**Cc:** Keller, Mary Beth (EOIR); Weil, Jack (EOIR)  
**Subject:** Complaint Intake Form IJ (b) (6) - IJC Memo - (b) (6)  
**Attachments:** (b) (6)  
(b) (6) complaint intake form Jan 13.doc  
**Importance:** High

Deborah,

Attached is the completed intake form in the (b) (6). Please let me know if you need anything further in this matter. Since this came from the Board I did not complete the contact information for the complaining party, if I need to let me know and I will complete that section and retransmit.

Thanks,

Happy New Year!

**John W. Davis**  
**Assistant Chief Immigration Judge**  
3130 North Oakland Street  
Aurora, CO 80010

(b) (6)

# Immigration Judge Complaint Intake Form

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

**Date Received at OCIJ: 2 January 2013**

complaint source type	
<input type="checkbox"/> anonymous <input type="checkbox"/> respondent's attorney <input 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"/> OIL <input type="checkbox"/> Circuit <input type="checkbox"/> EOIR <input type="checkbox"/> OPR <input type="checkbox"/> DHS <input type="checkbox"/> OIG <input type="checkbox"/> Main Justice <input type="checkbox"/> media
complaint receipt method	
<input type="checkbox"/> letter <input type="checkbox"/> fax	<input type="checkbox"/> IJC memo (BIA) <input type="checkbox"/> unknown <input checked="" type="checkbox"/> email <input type="checkbox"/> phone (incl. voicemail) <input type="checkbox"/> in-person <input type="checkbox"/> other: _____
date of complaint source	complaint source contact information
(i.e., date on letter, date of appellate body's decision) 27 December 2012	name: _____ address: _____ _____ _____ email: _____ phone: _____ fax: _____
additional complaint source details	
(i.e., DHS component, media outlet, third party details, A-number)	

IJ name	base city	ACIJ
(b) (6)	(b) (6)	John W. Davis
relevant A-number(s)	date of incident	
A(b) (6)		
allegations		
The matter was remanded by the Board back to Judge (b) (6) in October 2009, the sole issue was whether the respondent's motion to reconsider was properly denied. Despite this direction from the Board the IJ stated that (b) (6) stood by (b) (6) decision which was the subject of the remand.		
nature of complaint		

☐ in-court conduct    ☐ out-of-court conduct    ☐ due process    ☐ bias    X legal    ☐ criminal  
☐ incapacity    X other: Failure to follow Board directions on remand \_\_\_\_\_

003861

U.S. DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT

(b) (6)

In the Matter of:

(b) (6)

RESPONDENT

Case No.: A (b) (6)

Docket: (b) (6)

IN REMOVAL PROCEEDINGS

OFFICE OF THE IMMIGRATION JUDGE

The respondent has applied for a stay of REMOVAL in connection with a Motion to Reopen.

Upon consideration of the representations and submissions made by and on behalf of the respondent and the Department of Homeland Security, it is HEREBY ORDERED that the application for a stay of REMOVAL

( ) be granted, to be effective until determination of the Motion to Reopen.

( ) be denied.

(b) (6)

Date: 5-5-08

10

Appeal: RESERVED (A/I/B)

(b) (6)



## Memorandum

Subject	Date
(b) (6) (BIA December 27, 2012)	January 2, 2013

To	From
Brian O'Leary, Chief Immigration Judge	David L. Neal, Chairman
MaryBeth Keller, Assistant Chief Immigration Judge	

Attached please find a copy of the Board's decision dated December 27, 2012, and relevant portions of the record in the above-referenced matter.

The Board asked me to bring this case to your attention.

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

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File: A(b) (6)

Date: DEC 27 2012

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

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

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

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -  
Present without being admitted or paroled

APPLICATION: Reconsideration

This case was last before the Board on October 13, 2009, when we remanded the record to the Immigration Judge for issuance of a new decision regarding the respondent's motion to reconsider the Immigration Judge's May 19, 2008, decision denying his motion to reopen. The record will be remanded to the Immigration Judge for further proceedings consistent with this opinion and for entry of a new decision.

This case was originally before the Immigration Judge on April 3, 2008, when (b) (6) ordered the respondent removed from the United States. The respondent did not appeal that decision but, instead, filed a motion to reopen with the Immigration Judge. On May 19, 2008, the Immigration Judge denied the respondent's motion to reopen. The respondent again did not appeal and filed a motion to reconsider with the Immigration Judge. The Immigration Judge did not issue a written decision regarding the respondent's motion. Rather, the Immigration Judge made a handwritten notation of "Denied 7-1-08 [illegible initials] Ct. stands by written decision" on the cover page of the respondent's motion. The respondent appealed that decision.

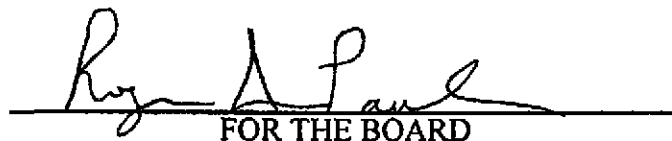
On October 13, 2009, the Board remanded the record to the Immigration Judge noting that we were unable to discern from the handwritten notation of July 1, 2008, the specific and factual bases upon which the Immigration Judge concluded that the respondent failed to meet the standard for reconsideration and we directed the issuance of a new decision. See 8 C.F.R. §§ 1003.1(d)(3)(iv) and 1003.23(b). On February 24, 2011, the Immigration Judge issued a new decision discussing the respondent's apparent failure to have his fingerprints taken but not discussing the respondent's motion for reconsideration. Instead, the Immigration Judge incorporated by reference (b) (6) May 19, 2008, decision denying the respondent's motion to reopen which is the subject of the respondent's subsequent motion for reconsideration. This is the same action the Immigration Judge took on July 1, 2008, when (b) (6) stated that (b) (6) stood by (b) (6) written decision.



Despite the previous mandate of the Board in our October 13, 2009, decision, the Immigration Judge has not provided the specific factual and legal bases for (b) (6) decision denying reconsideration. We cannot adjudicate the respondent's appeal of the denial of his motion for reconsideration based on the Immigration Judge's incorporation of (b) (6) May 19, 2008, decision denying reopening, a decision that was not appealed to the Board. The standards for reopening and reconsideration are different and require separate analyses. *See* 8 C.F.R. §§ 1003.2(b) and (c). As a result, we find it necessary to again remand the record to the Immigration Judge with specific instructions to adjudicate the respondent's motion for reconsideration and for issuance of a written decision in that regard.

Accordingly, the record will be remanded to the Immigration Judge for further proceedings consistent with this opinion and for entry of a new decision.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with this opinion and for entry of a new decision.

  
FOR THE BOARD

Falls Church, Virginia 22041

File: A(b) (6)

Date: OCT 16 2008

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

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

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

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -  
Present without being admitted or paroled

APPLICATION: Reconsideration

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's July 1, 2008, decision denying his motion to reconsider the Immigration Judge's May 19, 2008, decision denying his motion to reopen removal proceedings. We find it appropriate to remand the record to the Immigration Court.

On appeal, the respondent contends, *inter alia*, the Immigration Judge's handwritten notation of "Denied 7-1-08 [illegible initials] Ct. stands by written decision" on the cover page of the respondent's motion to reconsider provides an insufficient basis for meaningful appellate review. The Department of Homeland Security ("DHS") argues the Immigration Judge's decision is correct because DHS asserts the respondent did not raise any errors of fact or law in the denial of his motion to reopen.

As an initial matter, we note that the respondent did not appeal the Immigration Judge's April 3, 2008, decision ordering him removed, or the Immigration Judge's May 19, 2008, decision denying his motion to reopen. Thus, the merits of those decisions are not before us. The only issue before us on appeal is whether the respondent's motion to reconsider was properly denied. In this regard, we agree with the respondent that the Immigration Judge's July 1, 2008, decision is insufficient to allow for meaningful appellate review. The respondent raised issues of law and fact in his motion to reconsider with respect to the Immigration Judge's determination that the respondent failed to demonstrate *prima facie* eligibility for relief.<sup>1</sup> In particular, the respondent contested the Immigration

<sup>1</sup> We also note that on June 30, 2008, DHS requested more time to file a response to the respondent's motion to reconsider, which request the Immigration Judge implicitly denied in (b) (6) July 1, 2008, decision denying the respondent's motion.

Judge's findings related to inadmissibility and relief as a matter of discretion based on his purported criminal history and a prior grant of voluntary departure. However, we are unable to discern from the Immigration Judge's brief handwritten decision on July 1, 2008, the specific legal and factual basis upon which (b) (6) concluded that the respondent failed to meet the standard for reconsideration. *See generally Matter of Fedorenko*, 19 I&N Dec. 57, 74 (BIA 1984) ("The Board is an appellate body whose function is to review, not create, a record"); *see also* 8 C.F.R. §§ 1003.1(d)(3)(iv), 1003.23(b). As a result, we decline to address the respondent's remaining contentions on appeal with respect to the Immigration Judge's July 1, 2008, decision, which the Immigration Judge may consider on remand, if appropriate.<sup>2</sup>

Accordingly, the following order will be entered.

ORDER: The record of proceedings is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and entry of a new decision.

  
\_\_\_\_\_  
FOR THE BOARD

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<sup>2</sup> Furthermore, we lack jurisdiction to consider the new evidence submitted with the respondent's brief on appeal, which constitutes an untimely motion to remand based on the final administrative order entered by the Immigration Judge on April 3, 2008. *See Matter of L-V-K-*, 22 I&N Dec. 976, 979-80 (BIA 1999) ("Unless and until such time as the proceedings are reopened, the Board has no jurisdiction to entertain a motion to remand, which is in substance a motion to reopen, because the 90-day limit for filing a motion to reopen has expired.").

**IMMIGRATION COURT**

**(b) (6)**

In the Matter of: **(b) (6)**

Case No.: A **(b) (6)**

Respondent

IN REMOVAL PROCEEDINGS

**ORDER OF THE IMMIGRATION JUDGE**

This is a summary of the oral decision entered on February 24, 2011.

This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

- ☒ The respondent was ordered removed from the United States to MEXICO or in the alternative to MEXICO.
- ☒ Respondent's application for voluntary departure was denied and respondent was ordered removed to MEXICO or in the alternative to MEXICO.
- ☐ Respondent's application for voluntary departure was granted until \_\_\_\_\_ upon posting a bond in the amount of \$ \_\_\_\_\_ with an alternative order of removal to \_\_\_\_\_.

Respondent's application for:

- ☐ Asylum was ☐ granted ☐ denied ☐ withdrawn ☐ other.
- ☐ Withholding of removal was ☐ granted ☐ denied ☐ withdrawn ☐ other.
- ☐ Respondent's application for ☐ withholding of removal ☐ deferral of removal under Article III of the Convention Against Torture was ☐ granted ☐ denied ☐ withdrawn ☐ other.
- ☐ A Waiver under section \_\_\_\_\_ was ☐ granted ☐ denied ☐ withdrawn ☐ other.
- ☐ Cancellation of removal under section 240A(a) was ☐ granted ☐ denied ☐ withdrawn ☐ other.

Respondent's application for:

- ☒ Cancellation under section 240A(b)(1) was ☐ granted ☐ denied ☐ withdrawn ☐ other. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
- ☐ Cancellation under section 240A(b)(2) was ☐ granted ☐ denied ☐ withdrawn ☐ other. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
- ☐ Adjustment of Status under section \_\_\_\_\_ was ☐ granted ☐ denied ☐ withdrawn ☐ other. If granted, it was ordered that respondent be issued all appropriate documents necessary to give effect to this order.
- ☐ Respondent's status was rescinded under section 246.
- ☐ Respondent is admitted to the United States as a \_\_\_\_\_ until \_\_\_\_\_.
- ☐ As a condition of admission, respondent is to post a \$ \_\_\_\_\_ bond.
- ☐ Respondent knowingly filed a frivolous asylum application after proper notice.
- ☐ Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.
- ☐ Proceedings were terminated.
- ☒ Other: Motion to reconsider denied

Date: February 24, 2011

**(b) (6)**

Appeal waived/Reserved A I / B  
Appeal due by:

3-28

**CERTIFICATE OF SERVICE**

THIS DOCUMENT WAS SERVED BY: ☒ MAIL (M) ☐ PERSONAL SERVICE (P)  
TO: ☐ ALIEN ☐ ALIEN c/o Custodial Officer ☒ ALIEN's ATT/REP ☒ DHS  
DATE: February 24, 2011 BY: COURT STAFF  
Attachments: ☐ EOIR-33 ☐ EOIR-28 ☐ Legal Services List ☐ Other Q6

U.S. DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT

(b) (6)

File A (b) (6)

February 24, 2011

In the Matter of

(b) (6)

Respondent

)  
)  
)  
)  
)  
IN REMOVAL PROCEEDINGS

CHARGE:

APPLICATION:

ON BEHALF OF THE RESPONDENT:

ON BEHALF OF THE DEPARTMENT  
OF HOMELAND SECURITY:

(b) (6) Esquire

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

ORAL DECISION OF THE IMMIGRATION JUDGE

The Court would indicate that, first of all, that this individual appeared before the Court on the first hearing, a master calendar hearing on 1-25-2007. The matter was continued over to 1-25-2007, 1-26-2007, 3-14-2007, 4-03-2008, 2-24-2011. The Court would indicate that during this time period, the respondent has had four attorneys, (b) (6), (b) (6), (b) (6) and (b) (6). Three of them are excellent attorneys. They know what they are doing.

The Court would indicate that the first time, the

respondent did not comply with the Court's order. He filed no application for cancellation of removal, did not get his fingerprints, nothing. The Court ordered him removed at that time. The matter was sent back to the Court. Then per motion to reopen, the Court would indicate that the Court is ready to look at this material at this time.

The Court would indicate that the respondent was first served on January 22, 2007, by the U.S. Immigration and Naturalization Service now known as Homeland Security. At that time, Homeland Security indicated the respondent was removable pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act as amended.

He is a native present in the United States without being admitted or paroled or arrived in the United States at any time or place other than that designated by the Attorney General. The Court would indicate that the respondent entered the United States illegally. He is a native of citizen of Mexico, that he entered in 1989 according to him without inspection.

At a prior master calendar hearing, the respondent admitted and conceded removability from the United States. Removability has been shown by clear, convincing and unequivocal evidence. The respondent then asked at that time, way back, that cancellation be granted. The Court would indicate that the respondent did not file any application for relief, did not do anything on this particular matter. The Court has strictly put

on there, fingerprints needed. He did not take his fingerprints at that time.

Again, we are before the Court and we are not sure.

(b) (6) says the fingerprints were taken. I do not know if the fingerprints were taken or not on this particular individual. When I saw the fingerprints were not taken, the Court was concerned about it because of his criminal record. He has a fairly extensive criminal record. The Court would indicate that that was a concern that this Court had. Again, we are before the Court today and he has not taken his fingerprints that I know of. He has not shown me whether he has or not. So that bothers the Court greatly.

The Court would indicate that in this particular matter, the Court will incorporate again, the decision that the Court made on May 19, 2008, and a written decision that was sent to (b) (6) and also to Homeland Security indicating why the Court was not in fact going to reopen this particular matter and why it was denied. So the Court is going to incorporate that. I think it is fairly extensive in this particular matter. I think that today's date with the problems that we have had regarding the fingerprints and coming in at the last minute and asking for an asylum application is improper and has not been filed in a timely matter.

The Court would indicate that the Court has looked at this file and would indicate that I think the issue is not

LP

extreme and unusual hardship. I think two of the children have some real problems but I think the issue in this whole particular matter is whether there is good moral character. Again, I have no idea whether he took the fingerprints and did take the fingerprints. But the Court is of the belief that my decision that was written back in May 19, 2008, is the proper decision. It is very extensive in what the Court detailed why it was not granted. And the Court would incorporate in addition to the material that was given to the Court today that this material was untimely.

The Court would indicate, the Court does not believe that this is something that just popped up. There has been problems in Mexico for five, six years with the cartel. He knew about that. Counsel knew about that. I knew about that. So there is nothing new that the Court would indicate has happened.

The Court would indicate that the Court again will incorporate that decision. The Court will deny the motion at this time to reopen the motion to continue.

(b) (6)  
Immigration Judge

A(b) (6)

February 24, 2011



CERTIFICATE PAGE

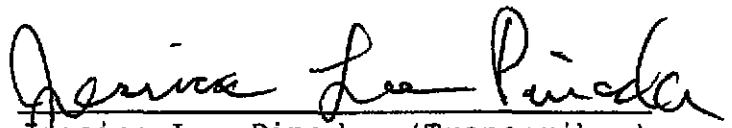
I hereby certify that the attached proceeding  
before (b) (6) in the matter of:

(b) (6)

A (b) (6)

(b) (6)

was held as herein appears, and that this is the original  
transcript thereof for the file of the Executive Office for  
Immigration Review.

  
Jessica Lee Pineda (Transcriber)

Deposition Services, Inc.  
12321 Middlebrook Road, Suite 210  
Germantown, Maryland 20874  
(301) 881-3344

May 21, 2011  
(Completion Date)

(b) (6)

NON-DETAINED

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE IMMIGRATION JUDGE

(b) (6)

In the Matter of:

File No.:

A (b) (6)

(b) (6)

In Removal Proceedings

Immigration Judge (b) (6)

*Donald J. [Signature]*  
*[Signature]*  
*[Signature]*

(b) (6)

(b) (6)

2008 JUL 19 PM 3:26

EXECUTIVE OFFICE

RESPONDENT'S MOTION TO RECONSIDER DENIAL OF  
MOTION TO REOPEN