



## Detail

Complaint Number: 745

Immigration Judge: (b)(6)

Complaint Received Date: 04/23/13

Current ACIJ

Barbomel, Richard J.

Base City

(b)(6)

Status  
CLOSED

Final Action  
Oral counseling

Final Action Date  
05/03/13

Past ACJIS:

A-Number(s)	Complaint Nature(s)	Complaint Source(s)
(b)(6)	In-court conduct	BIA

Complaint Narrative: "Telconduct during the proceedings was not in accordance with the standards of professionalism required of Immigration Judges and [redacted] none was inconsistent with judicial role." BIA Decision at 2.

### Complaint History

04/23/13	Complaint referred to ACIJ
04/23/13	Database entry created
05/02/13	ACIJ reviewed the ROP
05/03/13	Oral counseling

Sep 11, 2013

1 of 1

**Memorandum**

Subject	Date
(b) (6) (BIA April 19, 2013)	April 23, 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 April 19, 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: APR 19 2013

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. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -  
Convicted of aggravated felony (sexual abuse of a minor)

Lodged: Sec. 237(a)(2)(A)(i), I&N Act [8 U.S.C. § 1227(a)(2)(A)(i)] -  
Convicted of crime involving moral turpitude

Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -  
Convicted of aggravated felony (sexual abuse of a minor)

Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -  
Convicted of aggravated felony (crime of violence)

Sec. 237(a)(2)(E)(i), I&N Act [8 U.S.C. § 1227(a)(2)(E)(i)] -  
Convicted of crime of domestic violence, stalking, or child abuse, child  
neglect, or child abandonment

APPLICATION: Termination of proceedings; cancellation of removal; voluntary departure

This matter was last before the Board on June 16, 2010, at which time we sustained the respondent's appeal, and remanded the record for the Immigration Judge to conduct further fact-finding and to determine anew whether the respondent's withdrawn plea to (b) (6) (b) (6) nonetheless rendered him removable as charged under section 237(a)(2)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(A)(iii).

Following remand, the Department of Homeland Security (DHS) lodged additional charges of removability, and the Immigration Judge, in a decision dated June 17, 2011, found that while the dismissed plea to (b) (6) had no immigration consequences (I.J. at 3), the respondent's misdemeanor conviction for violating (b) (6) rendered him removable under section 237(a)(2)(E)(i) of the Act (I.J. at 4). The Immigration Judge found the respondent statutorily eligible for cancellation of removal under section 240A(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(a), but denied relief in discretion. The

Immigration Judge also denied voluntary departure. The respondent then filed the instant appeal, which will be sustained.

On appeal, the respondent, a native and citizen of Israel, argues the Immigration Judge erred in finding his conviction was a crime of child abuse, rendering him removable under section 237(a)(2)(E)(i) of the Act (Respondent's Br. at 7-11). The respondent also argues the Immigration Judge demonstrated bias and prejudice in conducting the proceedings and did not accord sufficient weight to the equities adduced in support of a favorable exercise of discretion (Respondent's Br. at 11-12). Finally, the respondent argues the Immigration Judge should not have considered the arrest report or university therapy records and, moreover, that the respondent's former counsel rendered ineffective assistance of counsel in failing to object to the admission of these documents (Respondent's Br. at 12-13).

With respect to removability, the respondent asserts that, in (b) (6) the United States Court of Appeals for the (b) (6) Circuit held that (b) (6) does not constitute sexual abuse of a minor under section 101(a)(43)(A) of the Act, 8 U.S.C. § 1101(a)(43)(A), because it does not include a scienter element. He argues that because (b) (6) does not have a scienter element, a conviction under the statute would also not constitute a crime of child abuse under section 237(a)(2)(E) of the Act, as that section was defined in *Matter of Velasquez-Herrera*, 24 I&N Dec. 503, 508 (BIA 2008) (defining it as "any offense involving an intentional, knowing, reckless, or criminally negligent act or omission that constitutes maltreatment of a child or that impairs a child's physical or mental well-being, including sexual abuse or exploitation"). Moreover, noting the import we placed in *Matter of Soram*, 25 I&N Dec. 378 (BIA 2010), on comparing statutes' purposes, the respondent argues that the purpose of (b) (6) differs from Congress's purpose in enacting section 237(a)(2)(E)(i) of the Act, given the (b) (6) Circuit's holding in (b) (6), that the purpose of (b) (6) is to reduce teenage pregnancies.

On review, we find it necessary to remand the record for further proceedings to determine the respondent's removability. Importantly, the Immigration Judge did not employ the categorical approach to determine whether the respondent's conviction under (b) (6) constitutes a crime of child abuse under section 237(a)(2)(E) of the Act. See *Matter of Velasquez-Herrera*, *supra*, at 515 (concluding that a "respondent's removability as an alien convicted of a 'crime of child abuse' must be established categorically"). Instead, the Immigration Judge appears to have considered evidence beyond the record of conviction, including the respondent's in-court testimony, an arrest report admitted solely for purposes of discretionary relief (Tr. at 12), and university therapy records (I.J. at 4).

We also note that the Immigration Judge's conduct during the proceedings was not in accordance with the standards of professionalism required of Immigration Judges and (b) (6) tone was inconsistent with (b) (6) judicial role. In light of these circumstances, the record will be remanded for further proceedings before a different Immigration Judge. The following order shall be entered.

A (b) (6)

ORDER: The respondent's appeal is sustained and the record is remanded for a new hearing before a different Immigration Judge.

*Teresa L. Donov*

---

FOR THE BOARD

IMMIGRATION COURT

(b) (6)

In the Matter of

Case No.: A(b) (6)

(b) (6)

Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 19 JUNE 17, 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 or in the alternative to .

☒ Respondent's application for voluntary departure was denied and respondent was ordered removed to ~~or in the~~ ISRAEL alternative to .

[ ] Respondent's application for voluntary departure was granted until upon posting a bond in the amount of \$ \_\_\_\_\_ with an alternate order of removal to .

Respondent's application for:

[ ] Asylum was ( ) granted ( ) denied ( ) withdrawn.

[ ] Withholding of removal was ( ) granted ( ) denied ( ) withdrawn.

☒ A Waiver under Section \_\_\_\_\_ was ( ) granted ( ) denied ( ) withdrawn.

Cancellation of removal under section 240A(a) was ~~( ) granted~~ ☒ denied ~~( ) withdrawn~~.

Respondent's application for:

[ ] Cancellation under section 240A(b) (1) was ( ) granted ( ) denied ( ) withdrawn. If granted, it is 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. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Adjustment of Status under Section \_\_\_\_\_ was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Respondent's application of ( ) withholding of removal ( ) deferral of removal under Article III of the Convention Against Torture was ( ) granted ( ) denied ( ) withdrawn.

[ ] 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: Respondent appeal

Date: Jun 17, 2011

Appeal: Waived/Reserved

Appeal Due By:

Notice by  
July 18, 2011

(b) (6)

ALIEN NUMBER: (b) (6)

ALIEN NAME: (b) (6)

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)  
TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer (M) ALIEN'S ATT/REP [ ] DHS  
DATE: 6/17/11 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)

Date: June 17, 2011

In the Matter of

(b) (6)

)  
) IN REMOVAL PROCEEDINGS  
)  
)  
)

Respondent

CHARGE: Section 237(a)(2)(A)(iii) of the INA - aggravated felony relating to unlawful sex with a minor; lodged charges - Section 237(a)(2)(A)(i) of the INA - crime of moral turpitude within five years of admission; Section 237(a)(2)(A)(iii) of the INA - aggravated felony relating to sexual abuse of a minor and aggravated felony relating to crime of violence; Section 237(a)(2)(A)(i) of the INA - crime of child abuse

APPLICATION: Termination; cancellation of removal under Section 240A(a) of the INA; voluntary departure under Section 240B(b) of the INA

APPEARANCES:

ON BEHALF OF RESPONDENT:

ON BEHALF OF THE DEPARTMENT  
OF HOMELAND SECURITY:

(b) (6)

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

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

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



ORAL DECISION OF THE IMMIGRATION JUDGE

This matter comes on before the Immigration Court in

(b) (6) after the matter had been before a separate Immigration Judge in (b) (6). The Immigration Judge in the prior proceeding found that the Respondent was removable for having been convicted of an aggravated felony and the Court will remedy this. The Respondent appealed. On an order of June 16, 2010, the Board of Immigration Appeals reversed the Immigration Judge's determination and remanded the record.

The Respondent was transferred in custody to this facility in (b) (6). His case was then before me.

The Respondent is a 27-year-old man who is a native and citizen of Israel. The immigration authorities began initial removal proceedings by alleging that he had been convicted of a crime relating to the sexual abuse of a minor. He was charged as an aggravated felony. After that initial charge was found by the Board to at least be uncertain, the Government lodged additional charges. Ultimately then, the Respondent's case comes up on hearing based upon four separate charges. Namely, that he is removable because he has been convicted of a crime involving moral turpitude within five years of his admission, that he is removable because he's been convicted of an aggravated felony which relates not only to sexual abuse of a minor, but because it is a crime of violence, and that he has been convicted of a crime of child abuse.

The essential facts of the case are all uncontested. The Respondent was indeed convicted of two offenses, including lewd acts upon a child and unlawful intercourse with a minor. See Exhibit 6, 7, 8, and 9. The charge of lewd acts upon a minor was ultimately vacated. The vacation of that order was at first not explained. Later, the (b) (6) Court explained that it had in effect erroneously accepted the Respondent's plea of no contest because there were not sufficient facts upon which to accept the plea that he had been involved with lewd and lascivious acts with a child. See Exhibit 9. The (b) (6) Court judge had apparently improperly taken the original plea and then sought to undo her error.

Even so, Respondent remained convicted of an offense relating to unlawful sexual intercourse with a minor. Although that offense was reduced to a misdemeanor, it nevertheless remains a charge and conviction against him.

The Government argued that the dismissal by the (b) (6) Court should not have an immigration effect. However, it is clear that the (b) (6) Court judge dismissed that charge and the plea the Respondent entered because procedural error occurred in the taking of the plea. Therefore, the conviction is without any immigration consequence against the Respondent. The action of the (b) (6) Court judge is not an action that relates to expungement under a rehabilitative statute. Therefore, it ultimately nullifies the immigration effect of a conviction for lewd and

lascivious acts upon a child. Lacking that particular offense as the basis of a charge, the Government's charge of aggravated felony cannot be sustained. Moreover, while the Government argues that the remaining offense is a crime involving moral turpitude, a conviction under Section 261.5(d) is not per se a crime involving moral turpitude. And it is clear that the crime did not occur within five years of the Respondent's admission. The crime occurred in 2006. The Respondent had been admitted as a nonimmigrant visa holder and ultimately as a legal permanent resident many years before this event occurred.

Even so, I find that the Respondent's conviction for unlawful sexual intercourse with a minor is a crime of child abuse. In Matter of Velasquez-Herrera, 24 I&N Dec. 503 (BIA 2008), the Board explained that the term crime of child abuse means any offense involving an intentional, knowing, reckless or criminally negligent act or admission that constitutes maltreatment of a person under 18 years old or that impairs such a person's physical or mental well being, including sexual abuse or exploitation. Clearly when a 22-year-old man has sexual contact, including digitally penetrating a child, endeavoring to penetrate her with his penis and ejaculating on her and does so without a condom, that child has been sexually abused and exploited. Consequently, I find that the Respondent is clearly removable for having been convicted of a crime of child abuse.

The Respondent designated Israel as the country of

removal. While he expressed an unwillingness to go to Israel because he would leave his family behind and go to a place where he says he lacks real support, he did not express any fear that would raise the issue of asylum, withholding or protection against torture. Consequently, I accept the Respondent's designation of Israel.

The Respondent filed an application for cancellation of removal. To be eligible for this form of relief, the Respondent bears the burden of proving that he has been a legal resident for five years, that he has been continuously residing in the United States for seven years, and that he has never been convicted of an aggravated felony. The Respondent meets the statutory requirements. See Section 240A(a) of the INA.

Even so, statutory eligibility alone is not enough. The Respondent must also show that he merits the relief he requests. In determining whether the Respondent merits the relief he requests, the Immigration Court weighs the positive social humane factors in his favor against the negative factors in the case. See Matter of C-V-T-, 22 I&N Dec. (BIA 1998).

In the Respondent's case he has many factors in his favor. All of his important family ties are in the United States. His mother and father and siblings all reside here. He has a residence of long duration, dating from about the age of six. He has been educated in the schools in the United States and in the universities of this country. While he has some history of

employment, the lack of that history only relates to the fact that he has been young and attending college as opposed to working. The Respondent himself testified to no particular property or business ties to the United States, though his father and at least one of his brothers is engaged in some business. The Respondent also testified that he's been involved in service to his community and been a value to his community. He was a frequent blood donor. He participated in beach clean up projects. Interestingly, he produced a letter from another person here in the detention center who is deaf and who the Respondent has taken under his arm to help to learn sign language and to otherwise get by in the existence here at the detention center. These are all important and valuable services that he has performed for his community. He has often been characterized as a gentle and giving person. He has provided a number of letters of recommendation from people of all walks of life. Clearly he has community support. Clearly he has been involved in projects of worth.

The Respondent has also testified to hardship. His parents and siblings testified. It's clear that everyone will suffer sadness if the Respondent is to be removed. One of his siblings characterized him effectively as the center of the family. He said that since the Respondent has disappeared from the family while in detention, the family Shabbat meals have declined in attendance. The more extended family is no longer participating. HE explained that basically since the Respondent's

involvement in this serious offense the family has been much pained and has been much wounded as a result. Certainly these are important factors in the Respondent's favor. On the negative side of the <sup>lodger</sup> letter is of course the Respondent's offense. Whatever the ultimate legal turn of events, the facts are that the Respondent had attempted sex and digitally penetrate a 13 year old girl. The Respondent engaged in genital to genital contact with her. He ejaculated. He did not wear a condom. Although at different points within his testimony he was less than certain, it appears that ultimately because he and his victim were afraid she might become pregnant should any of the Respondent's ejaculate reach the interior of her vagina, they arranged for a morning after pill.

As the Respondent testified about the factors in his life, he testified that he had never been involved with any drugs. However, he ultimately offered a counseling report. See Exhibit 14. In that report the Respondent told his counselor that he smoked marijuana less than one time a month. See page 35. He also identified himself as a 'wino' and that he gets drunk, but not as often as he used to, and that he has a history of smoking marijuana but has not done so recently. Id at page 50. This is, in some degree, a reflection in my mind upon the issue of rehabilitation. When the Respondent was asked about his other bad acts, he denied that he'd ever been involved with marijuana. In effect, his testimony was not truthful. At another point when he was being cross examined by the Government about whether or not he

was attracted to underage children, because the police report attributed to him such an admission, the Respondent said that while it's true that he had been to counseling, that none of his counseling ever had anything to do with sexual intercourse or any sort of sexual behavior "at all". Once again, his testimony is undermined by the information he provided to his counselor. On page 30 of Exhibit 14 the counselor notes that the Respondent is impulsive and has begun to address what appears to be a dependency on sex. On page 33 the Respondent shared that he is trying to refrain from sexual encounters and that it is difficult for him. Furthermore, the various self reporting forms that the Respondent provided in these counseling sessions do indeed relate to sexual matters. Once again, the Respondent's testimony was less than forthcoming.

On page 48 of that same report, the Respondent is characterized as having self destructive behavior that includes sexual promiscuity with a quote apparently attributed to him saying, "I've been with many people of many ages and intoxicated." That same sentence is followed thereafter by has included minors, but he does not share names and denies force. His sexual relationship with his girlfriend includes others. Clearly, the Respondent's instance that his counseling sessions had nothing to do "at all" with sexual matters was not candid.

The Respondent testified that he met his victim in a chat room. He said that she contacted him. He admits that they

met several times. He explained initially that he did not think that she was 13. He said it didn't occur to him that a person who looked like her and behaved like her would be of that age. He characterized her as over sexualized. He said that her makeup and her provocative clothing made him think that she was older. When pressed, he ultimately said that he thought that she was probably not an adult, but he didn't know that she was as young as 13 or 14. He said that he thought that she might be more like 16 or 17. Still, that is little redemption for an act such as this where one ignores the vulnerability of the victim and presses on anyway. It is a complete disregard for the other person.

The Respondent sought to explain his conduct, saying that he had a difficult home relationship. He said his father had kicked him out of the home on three occasions. He said in other testimony he felt like he just didn't quite fit in, even with the more extended family. The Respondent, to his credit, says that he knows that that's not really an excuse. He accepts ultimately that what he did was wrong. That acceptance, however, is to be tempered by the fact that repeatedly he returned to the theme that he really didn't know that she was so young. That he was, to some degree or another, misled. He explained that later saying that really he should have picked upon the cues and followed a different path. Interestingly, some of the supporting letters that he has provided include statements from family members who express that they know that what he did was not a crime. See



Exhibit 12, page 15. That comes from his brother, (b) (6). Of course (b) (6) characterizations are not ultimately important. The issue is the Respondent and his rehabilitation, among other factors.

The Respondent admitted that what he did was very detrimental. He accepts that probably his victim has suffered as a result of his choices.

The Respondent denies that his involvement was anyone other than the single victim about whom he was convicted. The police report, found at Exhibit 5, indicates that the Respondent had sexual contact with others. The police report also shows that after he had his initial contact with the victim whom he had digitally penetrated, that another young girl joined him in the car and they began to kiss. The Respondent is reported to have said to the police officer that he believed the victim to be 15, because she had told him that. In his own testimony, however, the Respondent denied that he had made such an admission.

It is clear to me that the Respondent has many factors in his favor. It is equally clear to me that the Respondent and his family will suffer hardship and sadness if they are to be separated. However, I ultimately find that the Respondent has not shown that he deserves the relief that he requests. I consider that the crime for which he has been convicted and the conduct to which he has admitted is both shocking and terribly harmful to the victim. Children who suffer sexual abuse are likely scarred for

life. This kind of conduct between a child and an adult can scar a person and make their relationships with men in the future very difficult. Sexual abuse is a shocking kind of crime and its level of impact upon the victim is not decreased simply because the justice system treats it as a misdemeanor. Although it is certain that the Respondent did not attempt to forcibly have any sexual conduct with his victim, the evilness of his act is not diminished simply because the 13 or 14 year old girl may have been interested in that kind of contact. He was the adult. It was his duty as a member of a civil society to undertake to protect the child, not to exploit her. In my view this is such a serious negative factor that it is not ultimately overcome by his positive factors.

Particularly, where I am struck that he was not forthcoming in his testimony about other aspects of his misconduct. His involvement with marijuana may have ultimately been of no real consequence.

It was not explored, because he early on cut off any issue about it when he testified that he had never used marijuana. On the other hand, the evidence is that he gave a different report to his counselor. The evidence is also that his purposes in seeking counseling also related to a kind of obsession or perhaps addiction to sex. These factors coalesce, in my view, to outweigh the Respondent's positive factors. This is also colored by the fact that the Respondent goes to a first world country where the benefits of an advanced society are available to him. Israel is a first world country. It is a place where despite efforts by some

of his witnesses to characterize it as a void where he has no support, apparently a place where he has many cousins. While his mother and father testified that he would be essentially alone, his brother testified that he (the brother) had recently returned from the wedding of a cousin there where he has innumerable cousins. I recognize that cousins are not the same thing as parents or siblings. However, the Respondent does not return alone to a country without any support whatsoever. On the contrary, he has apparently many cousins. Additionally, the Respondent is trained in engineering and has apparently nearly completed such a degree. He has worked for a time with an engineering firm. This is a transferable skill. The Respondent speaks Hebrew. He spent the early formative years of his life in Israel. While as I pointed earlier there will certainly be hardship, sadness, and unhappiness, he is a young man who can adjust to a new life in a place that while foreign in many aspects is not entirely without familiarity and support.

In the end, I find that despite the Respondent's family ties, the fact that his own presence here began at an early age and includes all of his education in this country, the fact that he has been involved in his community and that there will be hardship to him and his family, there is an irony that some of his community work has involved at least one occasion when he participated in a National Organization of Women's protest about domestic violence and mistreatment of women, an irony that both he

and his counsel readily recognized. However, even after considering all of those factors, I am unwilling to grant the Respondent's relief as a matter of discretion because I find that the serious nature of such an offense, its lasting impact upon a child, its failure to be forthcoming in the testimony, his reluctance but ultimate acceptance of actual culpability, and the fact that he goes to a first world country are all factors which weigh against a grant of relief.

His parents expressed some concern about him having to join the army of Israel. That is an issue of some concern, no doubt. However, nations can require, <sup>of</sup> their citizens the performance of conscription duties within the armed forces. I note the Respondent's evidence shows he did indeed register for the selective service in the United States. Consequently, while I consider that a factor, it does not tip the scale in favor of relief.

I also considered the Respondent's opportunities for voluntary departure or other relief. I deny voluntary departure for the same discretionary reasons as I have discussed above. The Respondent has not shown that he deserves this additional privilege under the immigration laws. He came to the United States. He grew up here. He broke its laws. It is a particularly heinous crime that he has committed against a particularly vulnerable victim. I find that he has failed to show that in the circumstances there is this privilege. Therefore,

after having considered all the evidence of record, whether it's discussed above or not, I make the following order.

ORDERS

IT IS HEREBY ORDERED that the Respondent's request for cancellation of removal under Section 240A(a) of the Immigration and Nationality Act be DENIED.

IT IS FURTHER ORDERED that the Respondent's request for voluntary departure under Section 240B(b) of the Immigration and Nationality Act be DENIED.

IT IS FURTHER ORDERED that the Respondent be removed from the United States to Israel on the basis of the allegations and the charge relating to child abuse. The other charges are not sustained.

(b) (6)

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.

*Sarah E Vandervort*

Sarah E. Vandervort, Transcriber

YORK STENOGRAPHIC SERVICES, INC.  
34 North George Street  
York, Pennsylvania 17401-1266  
(717) 854-0077

August 12, 2011  
Completion Date

sev/seh



1 Do you object to its admission, (b) (6) ?

2 (b) (6) TO JUDGE

3 Yes, Your Honor.

4 JUDGE TO (b) (6)

5 And what's your objection?

6 (b) (6) TO JUDGE

7 It's prejudicial. It refers on two different pages to a  
8 count that has been dismissed and vacated.

9 JUDGE TO (b) (6)

10 Well, does it refer to any count that was not vacated?

11 (b) (6) TO JUDGE

12 Not at all, Your Honor.

13 JUDGE TO (b)(6) & (b)(7)(C)

14 Is that your take on this matter, (b)(6) & (b)(7)(C)?

15 (b)(6) & (b)(7)(C) TO JUDGE

16 Well, I think actually that particular exhibit was  
17 really intended more for discretion, Your Honor, on the  
18 cancellation rather than the proof of the charge of removability.

19 JUDGE FOR THE RECORD

20 Then should we reach the issue of cancellation, that  
21 will be Exhibit #5 for purposes of discretion only.

22 JUDGE TO (b) (6)

23 Is there any other evidence, (b) (6) ?

24 (b) (6) TO JUDGE

25 Well, I notice that the Government file contains a

# Immigration Judge Complaint Intake Form

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

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

## complaint source type

- ☐ anonymous      XXBIA      ☐ \_\_\_ Circuit      ☐ EOIR      ☐ DHS      ☐ Main Justice  
☐ respondent's attorney      ☐ respondent      ☐ OIL      ☐ OPR      ☐ OIG      ☐ media  
☐ third party (e.g., relative, uninterested attorney, courtroom observer, etc.)  
☐ other: \_\_\_\_\_

## complaint receipt method

- ☐ letter      XXIJC memo (BIA)      ☐ email      ☐ phone (incl. voicemail)      ☐ in-person  
☐ fax      ☐ unknown      ☐ other: \_\_\_\_\_

## date of complaint source

(i.e., date on letter, date of appellate body's decision)  
April 23, 2013

## complaint source contact information

name: \_\_\_\_\_ BIA \_\_\_\_\_  
address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
email: \_\_\_\_\_  
phone: \_\_\_\_\_  
fax: \_\_\_\_\_

## additional complaint source details

(i.e., DHS component, media outlet, third party details, A-number)  
A(b) (6)

## IJ name

Immigration Judge (b) (6)

## base city

(b) (6)

## ACIJ

Rico J. Bartolomei

## relevant A-number(s)

A(b) (6)

## date of incident

On the Record Hearing June 15, 2011

## allegations

"[c]onduct during the proceedings was not in accordance with the standards of professionalism required of Immigration Judges and his tone was inconsistent with judicial role." BIA Decision at 2.

## nature of complaint

- XXin-court conduct      ☐ out-of-court conduct      ☐ due process      ☐ bias      ☐ legal      ☐ criminal  
☐ incapacity      ☐ other: \_\_\_\_\_



**Keller, Mary Beth (EOIR)**

---

**From:** Bartolomei, Jr. Rico (EOIR)  
**Sent:** Tuesday, May 07, 2013 5:52 PM  
**To:** Moutinho, Deborah (EOIR)  
**Cc:** Keller, Mary Beth (EOIR); Viray, Glenda (EOIR)  
**Subject:** BIA Decision in A075 726 654  
**Attachments:** complaint intake form IJ\_(b) (6)\_04\_2013.doc

Good Afternoon Deborah,

I have completed the intake form in the above BIA referral. I believe that it completes my action and you can close out the matter in the database. Thank you, Rico

date	action	initials
April 23rd	Listened to January 24, 2011 hearing because that it the page that BIA attached to memo.	BAR
April 23rd	Discovered that there was nothing wrong with that hearing whatsoever.	BAR
April 23 <sup>rd</sup> - May 2 <sup>nd</sup>	Contact Judge Keller to ensure that complaint was against correct Immigration Judge. Judge Keller with Deborah's assistance took immediate steps to track down the Record of Proceedings and retrieve from the BIA. Judge Keller did a preliminary review and informed me that the BIA did intend the review to take place for Judge (b) (6) but had identified the wrong hearing. Judge Keller clarified for me that the concern was over the June 15, 2011 hearing and highlighted specific portions that may be of concern.	BAR
May 2	Received ROP from Judge Keller. Started initial review of ROP	BAR
May 3 <sup>rd</sup>	Continued Review of the ROP including listening to audio portions of hearings.	BAR
May 3rd	<p>One hour ten minute telephonic counseling session with the Immigration Judge. Reviewed specific pages of transcript in which Immigration Judge interrupted counsel and/or questioned the witness before cross-examination. Spoke at length with the Immigration Judge to encourage (b) (6) to use "verbal markers" in the record. I observed that Immigration Judge had appropriate reasons to ask (b) (6) questions but the record did not show what those reasons might be, and were conveyed in a sense of unprofessionalism to the BIA panel that decided the matter.</p> <p>I also addressed with (b) (6) the lack of structure with respect to the testimony of witnesses. For example, (b) (6) did not have a specific structure of direct, cross, then redirect but would interject when (b) (6) felt it necessary. I told (b) (6) that if (b) (6) jumped in before cross and DHS had no questions then the record could appear that (b) (6) was doing the work of DHS. (b) (6) recognized this perception and agreed that it might be better to add that type of structure to the manner in which he conducts his hearings.</p> <p>The Judge accepted the counseling very well but was quite upset with the BIA review and decision. (b) (6) asked me what was wrong with (b) (6) "tone?" I actually listened to the audio portions and observed nothing incorrect with (b) (6) tone. At one point during the questioning of the respondent's mother, the witness' tone was far more assertive than the tone of the Immigration Judge. It is unclear to me whether the BIA actually listened to the audio portion. If the BIA did, its decision does not lend any insights as to the portions of incorrect tone. I could find none.</p> <p>Also, the Judge pointed out that the BIA decision contains no analysis. I agreed. I explained that the record conveyed a perception that (b) (6) was interjecting too much and informed (b) (6) of ways to anticipate and address that perception. (b) (6) agreed that he would incorporate the use of "markers" and add more structure to the witness portion of (b) (6) proceedings.</p>	BAR

[illegible]