



Detail

Complaint Number: 728

Immigration Judge: (b)(6)

Complaint Received Date: 03/05/13

003888

Current ACIJ
Weil, Jack H.

Base City
(b)(6)

Status
CLOSED

Final Action
Complaint concluded --
corrective action already taken

Final Action Date
03/07/13

Past ACIJ:

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

Complaint Narrative: Unprofessional and exhibited bias

Complaint History

03/05/13 Complaint referred to ACIJ
03/07/13 Complaint concluded -- corrective action already taken
03/08/13 Database entry created

Sep 11, 2013

1 of 1

2013-2789

Immigration Judge Complaint Intake Form

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

Date Received at OCIJ: 3-5-2013

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 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
3-5-2013	name: BIA IJC address: _____ _____ _____ email: _____ phone: _____ fax: _____
additional complaint source details (i.e., DHS component, media outlet, third party details, A-number)	
(b) (6)	

IJ name	base city	ACIJ
(b) (6)	(b) (6)	weil
relevant A-number(s)	date of incident	
A(b) (6)	9-7-2012	
allegations		
unprofessional & exhibited bias		
nature of complaint		
<input checked="" type="checkbox"/> in-court conduct <input type="checkbox"/> incapacity	<input type="checkbox"/> out-of-court conduct <input type="checkbox"/> other: _____	<input type="checkbox"/> due process <input type="checkbox"/> bias <input type="checkbox"/> legal <input type="checkbox"/> criminal

Weil, Jack (EOIR)

From: Weil, Jack (EOIR)
Sent: Monday, March 04, 2013 8:09 PM
To: (b) (6) (EOIR)
Cc: King, Cheryl (EOIR); Weil, Jack (EOIR)
Subject: RE: U(b) (6) -forwarding BIA Decision Notification -re: remand to another judge

(b) (6)

I am aware of this case. You and I have spoken about this issue earlier. I am confident that you understand the error of your ways and will not do it again. All I have spoken to have reported that you act in a professional manner and treat individuals appearing in your court with dignity and respect. I suspect this is an isolated occurrence and do not expect it to occur again. I will ask (b) (6) to assign this case to a (b) (6) judge.

Thank you,
Jack

-----Original Message-----

From: (b) (6) (EOIR)
Sent: Monday, March 04, 2013 6:52 PM
To: Weil, Jack (EOIR)
Cc: King, Cheryl (EOIR)
Subject: U(b) (6) -forwarding BIA Decision Notification -re: remand to another judge

In re (b) (6) (BIA decision and my Oral Decision attached)

Dear Judge Weil:

As you can see, the Board has remanded one of my cases to be heard by another judge. This is a case where I said something woefully wrong and I knew it immediately and apologized over and over again, but it was done and Respondent did not have to take my apology and explanation, and I was sorry I did it, and I'm still sorry, and hope I never let my thoughts out in such an inappropriate or misunderstood way again.

I said it, but I didn't mean it that way, but there's no way that it could be un-said, so all I can do is let you know that it was not meant literally, and that I tried to correct the impression it made, and I tried to judge the case fairly and objectively, though knowing that he did not forget what I said, as I expressed again in my Oral Decision (at 27-28).

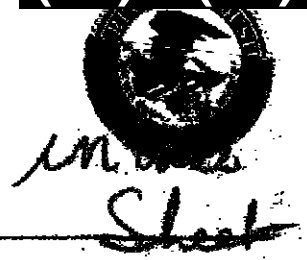
I could not pull up the Transcript on eTranscripts, and I don't have his BIA brief, but they'll speak for themselves, as I can only speak for myself.

I was not biased against him, but I was upset that he did this to himself. I was trying to express my concern for his future, but it came out wrong. My thoughts were thoughts that I had no right to even express, since my feelings about what was best for him were irrelevant to my decision, which I made on the basis of the evidence as I heard it.

Once the comment was made, however, my apologies could not take it back, even though I sincerely meant to explain that I had no such personal wish that he be killed or harmed, only that he avoid the cartel and go someplace safe and avoid the crime and danger. As I said, my feeling of concern was expressed so badly that I learned a lesson, which was not lost on me, even if not acceptable to him.

(b) (6)

Memorandum



Subject	Date
(b) (6) (BIA February 28, 2013)	March 5, 2013

To

Brian O'Leary, Chief Immigration Judge

MaryBeth Keller, Assistant Chief Immigration Judge

From

David L. Neal, Chairman

Pursuant to a previous understanding that the Board would bring to the attention of the Chief Immigration Judge any Board decision which remands a case to a different Immigration Judge, you will find attached a copy of the Board's decision dated February 28, 2013, and relevant portions of the record of proceedings, in the above-referenced matter. Please take the necessary steps to ensure that this matter is assigned to a different Immigration Judge on remand.

Further, the Board anticipates returning the record of proceedings for this remanded case to the Immigration Court in one week. If you wish to review the record prior to its return to the Immigration Court, please contact Suzette Henderson.

Thank you for your attention to this matter.

Attachments

Falls Church, Virginia 22041

File: A(b) (6)

Date: FEB 28 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. 212(a)(2)(C), I&N Act [8 U.S.C. § 1182(a)(2)(C)] -
Controlled substance trafficker

APPLICATION: Termination; cancellation of removal under section 240A

The respondent, a lawful permanent resident and native and citizen of Mexico, appeals the Immigration Judge's September 7, 2012, decision finding him removable as charged and denying his application for cancellation of removal under section 240A(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(a). The record will be remanded.

On appeal, the respondent asserts that the Immigration Judge was unprofessional and exhibited bias against him such that he did not receive a fundamentally fair hearing. *See* Respondent's Brief at 24-25. We agree. Given the totality of the circumstances before us and out of an abundance of caution, we will remand the record for a new hearing before a different Immigration Judge. The parties will have the opportunity to present testimony and evidence. As a result of our decision, it is unnecessary to reach the remainder of the parties' appellate arguments.

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



FOR THE BOARD

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 September 7, 2012.
 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 .
 - ☒ Respondent's application for voluntary departure was denied and respondent was ordered removed to MEXICO or in the 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 MEXICO.
- 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: Oral Decision and Order of removal entered
 Date: Sep 7, 2012

by Respondent

(b) (6)

Immigration Judge

Appeal: Waived/Reserved

Appeal Due By: October 9, 2012

ALIEN NUMBER: (b) (6)

ALIEN NAME: (b) (6)

(b) (6)

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: 9-7-2012 BY: COURT STAFF 15 (b) (6)
Attachments: ☐ EOIR-33 ☐ EOIR-
28 ☐ Legal Services List ☒ Other *Regs given appeal forms*

Q6

1 secondary. They've been sending you to secondary and they knew
2 that there was a compartment in your van. You didn't know they
3 knew, so you acted all huffy until that day when you didn't. So
4 they knew something was up that day, too. Anyway, if you want
5 to appeal, I'll do my decision and save your right to appeal.
6 You've got until October -- I'm sorry -- yes, October 9th to
7 file your appeal papers with the higher court in Virginia.
8 We'll give you the appeal papers here. You can get an attorney
9 if you want to, or ask the (b) (6) Project to help you. If you
10 don't get an attorney, you can do it yourself. If you don't
11 want to appeal, I will enter a final order and you go to Mexico.
12 And as I said, whichever -- if you ever do go to Mexico -- if
13 you win your appeal, maybe you don't have to. If you don't win
14 your appeal, whenever you go there don't be naive. They are not
15 going to leave you alone. They are at least going to expect you
16 to join ranks with them. If that's what you want to do, that's
17 your choice, but I hope you don't do that. I hope you go
18 someplace where they don't get their hands on you, where you go
19 someplace and start over again or go to some other country where
20 you can work and send money to your mother or whatever. But
21 it's not going to be -- I don't believe it's going to be safe
22 for you in (b) (6), Mexico and the place where you
23 made a deal with the devil. You know, to me I would hope as a
24 concerned person that we care about what happens to you. I
25 don't think you are a bad guy. I think you made bad choices and

1 you helped other bad people. But you're going to have to be
2 smarter now if you want to stay out of trouble. Or if you join
3 up with them, I hope you get killed quick so you don't cause any
4 more hardship to other people. But I hope you don't do that. I
5 hope you never die. I hope you die an old man, honest, hard-
6 working, pay your taxes, support your family, whatever. You may
7 even try to come back into the United States someday if you ever
8 got married to a citizen or your mother filed a petition for you
9 or whatever. So your choices are going to be yours from now on
10 and you're going to have to make good ones instead of bad ones.
11 And if you can prove that you've changed your life, someday they
12 might let you back into the country. If you don't then, you
13 know, hopefully the government will find out that you have made
14 bad choices and they won't let you back in because people who do
15 what you did are a threat to everybody. So that's my reasoning.
16 I thought you were entitled to know why I am making my
17 decisions. It's not an easy decision and it's obvious that I
18 care about you. It's just that I can't justify saying that you
19 deserve this or that, you know, there's a good reason or that I
20 can believe you, because I can't. So these are things --

21 A. (b) (6) I'm telling the truth, (b) (6) I didn't want to
22 participate with the --

23 Q. Then why were you going there last fall every day?

24 A. That's to visit my grandma, (b) (6)

25 Q. Every day?

1 ordered removed to Mexico, and cancellation of removal under
2 240A(a) was denied. And a note that says oral decision and
3 order of removal entered and signed by this Court. Appeal due
4 October 9, 2012. We'll give a copy to Government Counsel and
5 the respondent here in court. That concludes our proceedings
6 and we are done.

7 JUDGE TO OFFICER

8 And, Officer, you can give them both their copies.

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

10 And sorry to make you wait so long, (b)(6) & (b)(7)(C) but in
11 light of all our technical difficulties, I am glad we could get
12 at least one of these cases done today.

13 JUDGE FOR THE RECORD

14 So we are adjourned.

15 JUDGE TO (b) (6)

16 Q. And good luck to you, (b) (6) and I hope you can
17 find yourself safe.

18 A. I have one question for you.

19 Q. Yes, (b) (6)

20 A. Why didn't you, in everything you were just saying,
21 repeat what you were saying about if I join the cartels you hope
22 I get killed?

23 Q. No, I didn't say -- I mean --

24 A. You said it like that, Your Honor.

25 Q. I said that, but I said, if you decide to join the

1 cartels, I hope you get killed quick before you do any more
2 damage to anybody else.

3 A. Your Honor --

4 Q. I would hope that anybody -- and then I fixed myself
5 because I shouldn't wish that you die. If someone works for the
6 cartel, I hope that they die somehow soon and will get hit by a
7 bus, die of cancer. You know, we don't want criminals to run
8 around with a gun tomorrow and murder people.

9 A. I don't want to be a criminal, Your Honor.

10 Q. I don't want you to, either. So I -- if I said that
11 the wrong way, I didn't mean it. And I shouldn't have said, I
12 hope you die fast. I was upset because it does upset me to
13 think that we've got a 21-year-old kid sitting in our court who
14 is going to lose his residence, be deported to Mexico maybe,
15 unless you win your appeal. Maybe the Court will say I was a
16 nasty Judge and I shouldn't have said that. But I want to --
17 and that's why I tried to correct it at the time. I am not mad
18 at you. I hope you don't get killed. I hope you don't go work
19 for the cartel. I said that and I want to repeat it now. I
20 shouldn't have said it that way. You're right. You're
21 absolutely right that I shouldn't have said, if you go work for
22 the cartels, you hope I get killed. Yes, I said that, but I
23 didn't mean it in the way that I hope you get killed. If said,
24 if you go work for the cartels, you know, I hope you get, you
25 know, I hope you die soon or -- you know, I should have said,

1 you know. It's not a good way to say it. What I said was I
2 hope you don't do it, but if you did become a killer and a
3 cartel gangster, I would hope you die before you killed a whole
4 bunch of other people. So, yes, it's a trade --

5 A. Instead of trying to make it sound good, Your Honor, I
6 would just rather an apology, you know, say I'm sorry.

7 Q. I know it doesn't sound right and you're right and I
8 apologize. No, I apologize. I don't mean that. I -- it's
9 because I care about you that I am upset by this.

10 A. I don't think that's the problem, Your Honor --

11 Q. Because I wish you hadn't done this so I could grant
12 it.

13 A. -- or else you wouldn't deny my cancellation, Your
14 Honor. I had no other choice.

15 Q. I know -- it's okay. You have a right to an appeal.
16 I am glad to give you an appeal. If you win your appeal, good
17 luck to you. I hope you learned your lesson and don't do --
18 don't need it again. I only am charged with having to decide
19 whether or not I find that you warrant a favorable exercise of
20 the Court's discretion, and I don't think it's fair to anybody
21 else or it's going to help anybody. I think in some point, for
22 you to do what you did, doesn't deserve another chance. And if
23 we give -- if I give you another chance in light of everything
24 you did, I am afraid that that's going to encourage other people
25 and put other people in danger of doing to other people what

1 who I am? I have never heard of such a thing, Your Honor.

2 Q. You may be one of the victims of this crime war, too,
3 and that's why it upsets me that you are the one who loses your
4 residence, according to my order. Now the Board may reverse it.

5 A. I'm not a victim, Your Honor. My mom, my family --

6 Q. They may send your case back to another judge --

7 A. -- those are victims.

8 Q. -- because I made that comment and they may say I'm
9 not fair.

10 A. Because they have to suffer.

11 Q. Okay. You can get -- go ahead and talk. We can't
12 both talk at the same time, so go ahead.

13 A. I said my mom. I might not be a victim. My mom and
14 my sisters and my brothers might be the victims because I might
15 get killed when I go to Mexico, so that's the end of me. But
16 they still have to suffer. Why? Because a judge couldn't -- I
17 don't know, just saw all the bad things like that and didn't --
18 I don't know. I just don't know, Your Honor. I didn't have
19 nobody to represent me other than myself. I am not a lawyer. I
20 don't know what I'm doing. I don't know what I could have done
21 to make things better.

22 Q. I don't either. And I don't think you did a bad job
23 representing yourself. You had to decide when you were going to
24 tell us the rest of the story and you eventually did. But
25 that's not -- I mean, maybe a lawyer would have said, spill it

1 out first, or don't tell them until they find out. I don't
2 know. I mean, you know, just because you have a lawyer doesn't
3 give you any -- necessarily a better chance of winning. It's a
4 question of me making a decision based upon all the evidence.
5 And I'm looking at all the evidence and I'm seeing you had so
6 many opportunities. You did something that you knew was wrong
7 and you chose sides. You said, because I don't trust America, I
8 don't trust them, and everybody is corrupt, they should have
9 told me, they should have told me that they found -- you know,
10 they've got --

11 A. Well, you know what, Your Honor?

12 Q. -- you made all the decisions for yourself before we
13 ever saw you. Everything you did to make yourself deportable
14 was done by you up to May 1st. None of it happened afterwards.
15 Nobody framed you. Nobody added any evidence to our case after
16 May 1st. Everything was done by you. All the evidence was
17 about you and given by you and by the officers up to the time
18 you got arrested. So none of this deportability had anything to
19 do with anything that happened after you got put into court and
20 had a lawyer or didn't have a lawyer -- you know, Judge (b) (6)
21 or not. You were -- all the evidence that I ruled on was
22 complete and ended at May 1st.

23 A. You know what? On May 1st I should have hugged
24 Officer (b)(6) & (b)(7)(C) and thanked him for ending this before it
25 began. That's what I should have done.

1 Q. Well, maybe you should have. I think that would have
2 been better if you had come clean initially, instead of trying
3 to fight your case until the end by being dishonest about it or
4 hiding the truth. And you had a right to. You don't have to
5 admit anything. Like I told you today, you have a Fifth
6 Amendment right not to incriminate yourself. You don't have to
7 tell us anything. You don't have to tell us your name.
8 American police officers, they can ask for your papers, but they
9 can't ask -- they can't make you give them. We can't even ask a
10 U.S. citizen or a lawful -- you know, a resident has to carry
11 their green card, apparently. But a citizen doesn't even have
12 to tell a policeman my name. If a policeman asks me who are
13 you, I don't have to answer a single question. I have a Fifth
14 Amendment right not to say anything to anybody in the Government
15 of the United States or any state or city. I don't have to
16 answer questions. Now what happens when you don't answer
17 questions is up to sort of the circumstances and the courts try
18 to sort it out. But you make choices. And I wish you had made
19 other choices, too. That's why I keep saying it. I mean,
20 you're too young to be in this situation, and that's why it
21 bothers me more to think that on all of the facts of this case I
22 just couldn't bring myself to grant you cancellation because I
23 think it's not in the best interest of the United States and I
24 think it is better for you and everybody else if you don't get
25 away with this. If they don't win by saying, oh, just do it