



## Detail

Complaint Number: 743

Immigration Judge: (b)(6)

Complaint Received Date: 04/22/13

Current ACIJ  
Nadkarni, Deepali

Base City  
(b)(6)

Status  
CLOSED

Final Action  
Oral counseling

Final Action Date  
05/23/13

Past ACIJ:

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

**Complaint Narrative:** BIA remanded to another IJ. IJ did not consider favorable factors in respondent's case and made improper remark: "She has no value or has demonstrated no value or service to the community but for a sexual service."

### Complaint History

04/22/13	Complaint referred to ACIJ
04/23/13	Database entry created
05/23/13	Oral counseling

Sep 11, 2013

1 of 1



# Memorandum

Subject	Date
(b) (6) (BIA April 10, 2013)	April 22, 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 10, 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

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File: A(b) (6)

Date: APR 10 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)  
Senior Attorney

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

The respondent, a native and citizen of Hong Kong, has filed a timely appeal of the Immigration Judge's decision dated October 27, 2011, denying cancellation of removal under section 240A(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(a), as a matter of discretion. The Department of Homeland Security has filed a brief opposing the appeal. The appeal will be sustained, and the record will be remanded for further proceedings.

We review the factual findings of an Immigration Judge under a "clearly erroneous" standard 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all other issues in appeals from decisions of Immigration Judges, including legal and discretionary determinations and applications of law to fact. 8 C.F.R. § 1003.1(d)(3)(ii). As the respondent's application was filed after May 2005, it is governed by the provisions of the REAL ID Act.

We agree with the respondent that the Immigration Judge did not consider the favorable factors and social and humane considerations presented on her behalf, and did not weigh the adverse factors evidencing the respondent's undesirability as a permanent resident against those favorable factors in deciding whether a grant of cancellation of removal is warranted (I.J. at 3-8). See *Matter of Sotelo-Sotelo*, 23 I&N Dec. 201 (BIA 2001); *Matter of C-V-T-*, 22 I&N Dec. 7 (BIA 1998); *Matter of Marin*, 16 I&N Dec. 581 (BIA 1978).<sup>1</sup> The Immigration Judge denied cancellation of removal in the exercise of discretion after stating that the respondent had "nary a [favorable factor]" (I.J. at 3, 8).<sup>2</sup> We understand that the respondent has three misdemeanor convictions for prostitution, two of which occurred after she was granted a waiver under section 212(h) of the Act and adjusted status (I.J. at 4-5; Exhs. 6, 7). Criminal convictions are a

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<sup>1</sup> We disagree with the respondent's argument that rehabilitation and hardship are not appropriate factors to consider in assessing whether a grant of relief is warranted (Respondent's Br. at 9, 15). See *Matter of C-V-T-*, *supra*.

<sup>2</sup> The Immigration Judge did not otherwise address the respondent's eligibility for cancellation of removal.

negative factor in conducting a discretionary analysis. However, the adverse factors must be balanced against the favorable factors, and that was not done in this case.

While the Immigration Judge stated "[t]here is nothing to attest to her good character" (I.J. at 4), (b) (6) did not address the documents submitted by the respondent on February 18, 2011, which have not been entered into evidence. Nor did the Immigration Judge recognize the respondent's testimony, which (b) (6) did not find incredible, regarding factors that traditionally are considered equities. See, for example, I.J. at 3-4, describing the respondent's long residence in the United States, her son who is lawfully in the United States, and her consistent payment of taxes (Tr. at 31-32). Moreover, the Immigration Judge's statements, such as the respondent "has no value or has not demonstrated any value or service to the community but for sexual service" (I.J. at 4), do not demonstrate appropriate judicial tone. Further, the Immigration Judge's characterization of the respondent's financial difficulties stemming from her husband's gambling problems and the circumstances resulting in the respondent engaging in prostitution do not seem to accurately portray the respondent's testimony (Respondent's Br. at 10-14). Compare I.J. at 5-7 with Tr. at 35-43, 50-52.

Because of our limited fact-finding ability on appeal, we find that remand is appropriate for an Immigration Judge to conduct additional fact-finding that reflects all the evidence of record. See 8 C.F.R. § 1003.1(d)(3)(i); *Matter of S-H-*, 23 I&N Dec. 462, 465 (BIA 2002) (stating that the Board has limited fact-finding authority on appeal). Upon consideration of the record and the respondents' arguments, we find that a remand to a different Immigration Judge is appropriate under the circumstances. Accordingly, the following order will be entered.

ORDER: The appeal is sustained, and the record is remanded to the Immigration Court for assignment to a new Immigration Judge, and for further proceedings consistent with this 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 Oct 27, 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 HONG KONG or in the alternative to
- ☐ Respondent's application for voluntary departure was denied and respondent was ordered removed to HONG KONG 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 HONG KONG.

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 ( ) granted ( ) denied ( )
- ☐ Respondent's status was rescinded
- ☐ Respondent is admitted to the United States
- ☐ As a condition of admission, respondent
- ☐ Respondent knowingly filed a frivolous notice.
- ☐ Respondent was advised of the likelihood of failure to appear as ordered in the proceedings.
- ☐ Proceedings were terminated.
- ☐ Other: \_\_\_\_\_
- Date: Oct 27, 2011

(b) (6)

Appeal: Waived/Reserved Appeal Due By:

11-28-2011

ALIEN NUMBER: (b) (6)

ALIEN NAME: (b) (6)

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CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PE  
TO: ☒ ALIEN ☐ ALIEN c/o Custodial Office  
DATE: 10.27.11 BY: COURT STAFF  
Attachments: ☐ EOIR-33 ☐ EOIR-  
28 ☐ Legal Services List ☐ Other

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(b) (6)

Q6

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

(b) (6)

File No.: (b) (6)

October 27, 2011

In the Matter of

(b) (6)

Respondent

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IN REMOVAL PROCEEDINGS

CHARGE:

APPLICATIONS:

ON BEHALF OF RESPONDENT:

(b) (6)

ON BEHALF OF DHS:

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

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 54-year-old woman, a native and citizen of Hong Kong. The charges against her in the Notice to Appear dated February 8, 2010, are that she adjusted her status to a lawful permanent resident on January 18, 2006, and that she was coming to the United States to engage in prostitution and that on December 9, 2008, was convicted in the (b) (6) County Criminal Court for prostitution with a sentence of 90 days and then on December 10, 2008, arrived in (b) (6) and applied for admission to the United States.

At a Master Calendar hearing held before Judge (b) (6) in July 2010, the respondent admitted all of these allegations of fact, but denied removability under Section 212(a)(D)(i), coming to the United States to engage in prostitution. Judge (b) (6) made a finding on August 12, 2010. There is a lodged charge marked as Exhibit 2 dated July 12, 2010, with a charge 212(a)(2)(A)(i) and it is for having committed acts involving moral turpitude and Judge (b) (6) made a finding with regard to that.

After hearing the testimony and after reviewing the record, including conviction documents, the Court would find that she is deportable by clear, convincing and unequivocal evidence and removable as well.

For relief she has asked for cancellation of removal for certain permanent residents, 240A(a). The law with regard to this form of relief is a hybrid born after IIRAIRA that basically and factually encapsulated the old 212(c) rule in that the Court is empowered to make a balancing of the positive factors and negative factors. There are in fact three seminal cases that the Court is guided by: Matter of Marin, Matter of Edwards and Matter of Buscemi, all Board decisions from the late 1980's or in Marin, 1978, until 1990, Matter of Edwards. The cases talk in terms of balancing various factors and the case law in Marin specifically spells these out. It says factors deemed adverse to an applicant are the nature and underlying circumstances of the exclusion or deportation ground at issue; significant violations



of this country's Immigration laws; criminal record; its nature, recency and seriousness; and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. Those are balanced against favorable factors, including family ties within the United States; residence of long duration in the country; evidence of hardship to the family if deportation should occur; history of employment; the existence of property or business ties; evidence of value or service to the community; proof of genuine rehabilitation if a criminal record exists; and other evidence attesting to her good character. The later case, Matter of Edwards, more specifically talks about the unusual and outstanding equities from the Buscemi case and state that an alien who demonstrates unusual or outstanding equities, as required, is merely eligible for having a favorable exercise of discretion considered in her case. Such a showing, while not a threshold for discretionary relief, also does not compel that discretion be exercised in her favor. Matter of Edwards, Int. Dec. 3134 (BIA 1990).

I have just heard from the respondent, no other witnesses and I am struck. In fact, I actually pulled this out to read because if you look at the favorable factors listed in Marin, the respondent has nary a one. Before I get into the facts, the family ties that she has are weighted towards Hong Kong. Her residence of long duration in this country is true, but it is

spotted with three time criminal activity. A hardship has not been demonstrated in any way whatsoever to any family member. Her history of employment is spotty, at best, and most of her relationships with regard to criminal activity was employment related. She has no business ties. She has no value or has not demonstrated any value or service to the community but for a sexual service. She has absolutely no proof of genuine rehabilitation. There is nothing to attest to her good character. These issues I have probably not seen in almost (b) (6) (b) (6) on the bench.

The respondent became a lawful permanent resident. She is 54 years old and, as I stated, entered in 1999 at the end of the month of November and became a lawful permanent resident in 2006. In 2007, she left for a few weeks and in 2009 she left for a few days. The time is not an issue. She is divorced. She has three children that are not necessarily children now. We did not get into their ages. I do not know that it is relevant, but they are adults. One of her children is studying here in the United States with a F-1 visa. He is going to a local community college. All of her other two children are in Hong Kong. She is employed working for the Chinese News and she earns about \$300 a week through that enterprise. She also cleans houses for about \$200 a week and she says she pays her taxes. Her arrests were for prostitution, very interesting in that she was arrested in 2003 for prostitution and she came to Court to adjust status and

adjusted status and was granted a 212(h) waiver sometime after that arrest. After that arrest, she was further arrested in January 2008 and in May 2008 for the same crime. I asked why has she returned to prostitution and her story is that in 2007, her husband, with whom she is now divorced, had taken her money. Apparently the child that has the F-1 visa, his father had provided her money, she put the money in her account, her husband had gambling problems and he withdrew that money and so the respondent had to borrow \$10,000 from an unscrupulous man and she got involved with prostitution to pay it back. She said that people had held her passport and she got engaged into prostitution because she needed her passport. So she was asked, why did you not get one from the Hong Kong government and she said, "I didn't think of that." Her lawyer asked, why can you assure this will not happen again and her answer is, because I have divorced my husband and he cannot force me this way again. She was asked then if she was blaming her husband and she said that she admits she has some guilt and that is the way she put it. That is the extent of her direct examination. I do not really know given these circumstances what else possibly could have been asked.

She was cross-examined. We learned that her mother, two adult children and six siblings all live in Hong Kong. She said she was only arrested three times. She was asked why she was originally arrested for prostitution in 2003 before the F-1

problem and she said that she needed the money to go to hair cutting school. She worked at a massage parlor and they asked her to engage in prostitution on the side. Her son does not know about the prostitution, which was why he was not a witness here today. She is ashamed, which is understandable. She said that she prostituted for about eight months.

This is also an interesting case to the Immigration Court because the law under the Immigration and Nationality Act under Section 212(a)(2)(D) specifically bans prostitution. I am not going to engage in any moral discussion of prostitution of whether it is a crime or victimless crime or whatever. But specifically Congress has deemed that prostitution is a ground of excludability and they have pointed that out as something that is serious. The respondent in the present case was excused from that ground of inadmissibility with a 212(h) waiver and the Judge in the case, which I do not have that particular record before me, determined that there was a certain degree of hardship involved to someone and I am sure that the respondent was made aware that the 212(h) waiver was extremely gracious and that the prostitution was extremely serious vis-à-vis the Immigration law. She had got involved with that because she needed some cash to go to barbering school, is the way she put it, or haircutting school. She also went to the State Court and the County Court and the Judge there, I am sure, told her that it was wrong and she learned that it was wrong. Whether she was there for an hour

or not, she was in jail for a little bit.

Five years later she got involved with it again because of this money problem and she decided she needed some more cash. She got the cash and she prostituted herself again having full knowledge of the Immigration consequences. Then just a few months later, apparently a week after she was released, she went out and did it again. Interestingly enough, one of the things that she could have done was to go to the Embassy or the Consular Office of Hong Kong to get a new passport and she did not even think of that. She thought, apparently, that it was easier to prostitute herself. The only reason she does not think it is going to happen again is because she is divorced from her husband, but the Court is not persuaded. The equities that she has are slim indeed. I am sympathetic to the fact that she has the mindset that this is her only out, that this is the only thing that she, as a woman, can do to earn money. To me that saddens me greatly. That is a sad commentary on the human condition. However, with regard to Immigration law, I think the biggest factor that I have before me is the fact that she stood in Immigration Court and was told that this was a serious situation and the Judge graciously gave her a 212(h) waiver and then she got arrested two more times in the next five years. I have to stand for something and I have to stand for the enforcement of the Immigration laws of the United States. I do not mind someone having a second chance. This woman had four

chances and she put all of her mindset in the fact of the Immigration of the United States, the laws of the United States, the laws of the State of (b) (6) County was subservient to her needs and I cannot give her administrative grace for that. My discretion is against her. I will deny her application, 42(a), for cancellation of removal.

There is no other relief that I am inclined to give her. Even if she had asked for voluntary departure, even had she should, I would deny for the exact same reason in the discretion of the Court and I would order her removed from the United States to Hong Kong, which is apparently the designated country.

It is so ordered.

(b) (6)

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.

*Linda M. Barnett / TL*  
\_\_\_\_\_  
Linda M. Barnett, Transcriber  
Free State Reporting, Inc.

December 28, 2011  
(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.

1 And that was prostitution, as well?

2 (b) (6) TO JUDGE

3 That was -- that was prostitution, as well, Your Honor.

4 JUDGE TO (b) (6)

5 I kind of was asking --

6 (b) (6) TO JUDGE

7 I'm sorry.

8 JUDGE TO (b) (6)

9 -- asking her, but that's all right. Go ahead.

10 (b) (6) TO (b) (6)

11 Q. Was that prostitution, as well, the third conviction?

12 A. Yes.

13 Q. Now, this January 2008 and May 2008 convictions, these  
14 were after you got your green card, isn't it?

15 A. Yes.

16 Q. Is there any reason why you returned to prostitution?

17 A. Because 2007 -- the year of 2007 when I went back to  
18 Hong Kong I realized my ex-husband had taken all the money out  
19 from my bank account and that was the time I really urgently  
20 need that money because that, that -- at that time, my son was  
21 studying on a program that would lead him to get the F-1 visa to  
22 study in the United States.

23 Q. Did your ex-husband have access to this account?

24 A. He stole three, three checks from checkbook and  
25 totally withdrawn \$10,000.



1 Q. And without this money would your son had been able to  
2 maintain his F status and go to school?

3 A. Because, at that time, my son was attending the  
4 transfer school and I have to have the guarantee money in the  
5 bank to guarantee the transfer of his status.

6 Q. And, and if you didn't have that money would he have  
7 gotten that transfer?

8 A. That is correct.

9 Q. So, did you confront your ex-husband with why he took  
10 this money?

11 (b) (6) TO JUDGE

12 I'm sorry, Your Honor, did I --

13 (b) (6) TO (b) (6)

14 Q. Did you confront your ex-husband with why he took this  
15 \$10,000?

16 A. It happened very often because he, he was a gambler  
17 and he owe money from his, from his jockey club races and then  
18 he had borrow money and have to pay back.

19 JUDGE TO (b) (6)

20 Q. I need a point of clarification. Ma'am, is that what  
21 drove you to the January 2008 charge?

22 (b) (6) TO JUDGE

23 I'm sorry, I didn't --

24 JUDGE TO (b) (6)

25 Q. Is that what drove you to the January 2008 charge?

A (b) (6)

1 A. Yes, that is correct.

2 Q. Well, after being convicted, then, why did you return  
3 in May?

4 A. Because the owner of the shop had taken my passport as  
5 a hostage and, and at that time, they want me to work all the  
6 days but because I couldn't I told them I can only work two days  
7 and, and it was very difficult to pay back all the \$10,000 debt  
8 by working only two days.

9 Q. Why, why did -- first of all, owner of what shop,  
10 ma'am?

11 A. It was a Vietnamese owned shop and they already, they  
12 already closed down so I cannot find them anymore.

13 Q. Why did you need your passport?

14 A. Because if they hold my passport I cannot get out of  
15 here. I cannot go back to Hong Kong.

16 Q. Could you not just get another passport from the Hong  
17 Kong Government authorities?

18 A. I, I never thought about that, at that time.

19 Q. Okay.

20 (b) (6) TO (b) (6)

21 Q. How much did you borrow again?

22 A. \$10,000.

23 Q. And when did you borrow this amount?

24 A. It was about the end of 2007. That was in December.

25 Q. So, did he lend you the entire amount up front or did

1 he pay you as, as time went on?

2 A. Because the urgent need, I, I asked one time payment  
3 and I got it.

4 Q. Had you paid off the \$10,000 by the time you had been  
5 arrested for your first conviction in January of 2008?

6 A. No, not in January.

7 Q. So you still owed him money after that first  
8 conviction?

9 A. Yes.

10 Q. Other than him keeping your passport, was there any  
11 other reason for you to be afraid of him?

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

13 Objection, Your Honor, it's leading.

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

15 Sustained.

16 JUDGE TO (b) (6)

17 Q. He kept your passport, is that correct?

18 A. Yes.

19 Q. Were you afraid of him?

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

21 Objection, Your Honor, it's leading.

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

23 That's a sustained objection, as well.

24 JUDGE TO (b) (6)

25 You're suggesting the answer in your question, (b) (6)

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(b) (6) TO (b) (6)

Q. Is there any reason for you to be afraid of him?

(b) (6) TO JUDGE

Is that an objection, too?

JUDGE TO (b) (6)

I think what you want to ask him, how she felt about him or what were her feelings -- you know, what her relationship was with -- you're suggesting the fear when you ask the question. That's what the objection's about.

(b) (6) TO (b) (6)

Q. How did you feel about this guy that you worked for -- the guy who owned the shop?

A. On the outside he looks very kind and, and I had a feeling he can help me.

Q. And on the inside?

A. For the first week there was -- you know, ordinary, there's no problem, but after I've been there one week and he start sending me customer and say you better, better do it or you'll never be able to pay back your debt.

Q. Did he say anything else to you?

A. He urged me to hurry, hurry up and pay back the money or otherwise he would send me to other places.

Q. Did he indicate what he would do to you if you did not pay the money back?

1 A. He also charged -- he also threatened me that he would  
2 charge me stacked up interest and also urged me to go to, to  
3 sell my house and, and, and pay him back.

4 Q. When you were arrested for the first prostitution  
5 conviction did you, did you tell the owner of this shop  
6 anything?

7 A. At, at the first arrest I told him that I, I, I don't  
8 want to do it anymore.

9 Q. And what did he say?

10 A. Then he, he said you -- but you have to pay, pay me  
11 back the money, you have to keep working to pay me back the  
12 money or otherwise I will send you to other places even more,  
13 more serious.

14 Q. When did you, finally, pay him off?

15 A. On -- at, at the time of May 2008 when I was arrest  
16 and I had -- still had \$2,000 balance on the loan and, and after  
17 that I talked to my ex-husband and he borrow some money from his  
18 friends and then we payoff the, the loan.

19 Q. Okay. Didn't you consider borrowing the money from  
20 your husband before engaging in this prostitution?

21 A. No -- not many people will loan him money anymore  
22 because he probably exhaust every avenue that he can borrow  
23 money and as a matter of fact he told his friends that his, his  
24 wife has money because his wife has skills and -- in, in hair --  
25 in cutting hair and doing other things.

1 Q. Are you, are you still married to him, I'm sorry?  
2 A. Yes, at that time, yes.  
3 Q. Okay. Are you married to him now?  
4 A. Not anymore. After this incident, I'm afraid that he  
5 will keep draining my, my, my assets.  
6 Q. What do you believe he would have done to you if you  
7 did not pay the loan?  
8 A. I am very afraid because they, they had taken my, my  
9 passport and also taken the, the address of my son and, and his  
10 location. He also had all the information relating my Hong Kong  
11 address and, and, and all the backgrounds I had.  
12 Q. How does the Court know that you're not going to  
13 engage in prostitution or any other criminal activity again?  
14 A. Because I had, because I have totally -- I have  
15 divorced my husband and cutoff from him so he can no -- he no  
16 longer can drain off my money, drain off my money and lead me  
17 into such a situation.  
18 (b) (6) TO JUDGE  
19 I'll pass the witness, at this time, Your Honor.  
20 JUDGE TO (b)(6) & (b)(7)(C)  
21 One second.  
22 JUDGE TO (b) (6)  
23 Q. Now, ma'am, are, are you blaming your husband for this  
24 activity?  
25 A. I admit that I have some guilt but on top of that my

1 husband had always taken my money and forced me into situation  
2 and, and -- forced me into the situation.

3 Q. Very well.

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

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

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

7 Excuse me.

8 (b)(6) & (b)(7)(C) TO (b) (6)

9 Q. You have traveled frequently to Hong Kong to visit  
10 family, isn't that right?

11 A. Three times because I have a daughter and then a son  
12 and also my mother in Hong Kong and the mother is often sick.

13 Q. Okay, so your mother is in Hong Kong and you have two  
14 adult children in Hong Kong?

15 A. Yes.

16 Q. And you also have six brothers and sisters in Hong  
17 Kong, don't you?

18 A. Yes.

19 Q. And in the United States you have only one son who is  
20 in F-1 student status, correct?

21 A. Yes.

22 Q. When did your son, (b) (6), come to the United States?

23 A. 2006.

24 Q. Was he an F-1 student in 2006?

25 A. Yes.

1 Q. Well, I'm looking at the visa that you provided with  
2 your documentation for your son, which is at Tab J of your  
3 application packet, and it indicates that he didn't get his F-1  
4 visa until June of 2009, is that right?

5 A. He went back to Hong Kong and he lost his passport  
6 together with the original visa so that -- what you see is  
7 re-issued passport and visa.

8 Q. Okay. Now, who is (b) (6) father?

9 A. He's in Hong Kong. The name is (b) (6)  
10 (phonetic sp.).

11 Q. Okay. So, when you have been speaking today of your  
12 ex-husband that stole your money were you talking about (b) (6)  
13 (b) (6) ?

14 A. No, I was -- the one who took my money, I was  
15 referring to the one who, who is in United States -- was in  
16 United States.

17 Q. Okay, so the ex-husband that took all of your money,  
18 what is his name?

19 A. (b) (6) and the last name (b) (6)

20 Q. And that is the husband that you got your lawful  
21 permanent resident status through, is that correct?

22 A. Yes.

23 Q. And he's a, he's a U.S. citizen, is that right?

24 A. Yes.

25 Q. I want to clarify, first off, how many times have you,



1 And, and her answer was because of the passport situation?

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

3 Right.

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

5 Okay. Thank you. I, I didn't, I didn't, actually, know  
6 the actual days. I, I thought there may have been a second --  
7 go ahead.

8 (b)(6) & (b)(7)(C) TO (b) (6)

9 Q. Now, when you were arrested in January and while your  
10 case was pending did you tell the police or anyone about your  
11 situation with your passport?

12 A. No, I, I was afraid to tell because they were holding  
13 all my -- were holding my things and, and also my records in  
14 Hong Kong.

15 Q. You didn't think the police would help you?

16 A. No. Also nobody asked me about that.

17 JUDGE TO (b) (6)

18 Q. What do you mean nobody asked you about that?

19 A. Nobody had asked me about my passport and they just  
20 told me you're prostituting and you better admit your, your  
21 guilt.

22 Q. Now, when you, actually, borrowed the money from the  
23 salon spa owner, you agreed to prostitute yourself to help pay  
24 back that money, isn't that right?

25 A. Yes.

1 Q. You were a prostitute in Hong Kong, as well, before  
2 you came to the United States, weren't you?

3 A. No, I did not.

4 Q. Now, why would you agree to prostitute yourself when  
5 you know that, that is against the law?

6 A. At the beginning they told me I was just doing part-  
7 time so, so I, I would not be arrest and, and also they said,  
8 you know, your, your job is described as, as -- in, in the  
9 massage but you occasionally to do some prostitution.

10 Q. Now, you, initially, tried to get your green card  
11 before -- from USCIS and they denied it because you had been  
12 convicted of prostitution, isn't that right?

13 A. Yes.

14 Q. And then you came to Immigration Court and your  
15 prostitution conviction was again discussed as an issue, wasn't  
16 it?

17 A. Yes.

18 Q. So you were well aware that prostitution could lead to  
19 your deportation?

20 A. Yes.

21 Q. Now, you're claiming today that you were compelled to  
22 prostitute yourself because you had to earn -- you had to get  
23 the money for your son's schooling in the United States?

24 A. The money to support my son was sent by my son's  
25 father in Hong Kong and I -- if I don't have this money I have a

1 very difficult time to explain to everybody why I don't have  
2 this money.

3 Q. Well, in fact, it is your son's father, (b) (6),  
4 who is providing the financial support for your son, isn't that  
5 right?

6 A. Yes, that is correct.

7 Q. And he's the one that is listed as the responsible  
8 party for the finances on your son's F-1 paperwork, isn't that  
9 right?

10 A. Yes.

11 Q. So, if your son found himself in financial need why  
12 didn't he go to his father in Hong Kong to resolve that problem?

13 A. The money's already been sent to me in my account --  
14 in care of my account and, and -- but when I went to the bank  
15 and tried to, tried to get the money, I found that my money has  
16 been taken away by my U.S. husband.

17 Q. You were caught twice and arrested for prostitution  
18 but you were, actually, prostituting yourself for more than a  
19 year weren't you?

20 A. My prostitution last for -- starting from December of  
21 2007 but before that -- during that period I had my massage  
22 license and also worked at the Chinese newspaper and I also  
23 worked at a regular massage parlor doing massaging work.

24 JUDGE TO (b) (6)

25 Q. So, had you been prostituting for more than a year?

- (6) (b) (6) owns a home for which she has always timely paid her mortgage and escrow amounts (Respondent's EOIR-42A Exhibits E and F).
- (7) (b) (6) has enrolled and attended the (b) (6) College of Business and (b) (6) Beauty School #4 (Respondent's EOIR-42A at Exhibit I).
- (8) (b) (6) has touched positively the lives of her neighbors, students, co-workers and friends (Respondent's EOIR-42A at Exhibit K).
- (9) (b) (6) testified that her husband (at the time) had taken all the money out of her bank account that she had set aside for her son's F-1 visa tuition amounting to over \$10,000, and that her son would not have been able to maintain his status and faced removal from the US without such funds (Tr. at 36).
- (10) (b) (6) testified that her husband was a habitual gambler and when she confronted him about this, he told her that he owed money from jockey-club races and needed the money (Tr. at 36).
- (11) (b) (6) testified that because the tuition was required up front, she in her desperation borrowed it from the owner of a shop, this owner kept her passport, and in return she would work for him at his shop in prostitution to pay off this amount (Tr. at 37-38).

- (12) (b) (6) testified that after she was arrested in January of 2008, she told the shop owner she did not want to prostitute any more, but since she had not yet paid off the entire amount, the shop owner threatened that he would send her to other places even more serious is she refused (Tr. at 40).
- (13) (b) (6) testified that she still owed \$2000 and even asked her husband to borrow it to pay off the shop owner, but he would not do so, and instead telling his friends that his wife has skills “– in cutting hair and doing other things” (Tr. at 40).
- (14) (b) (6) testified that she was “very afraid [of the shop owner] because they, they had taken my, my passport and also taken the, the address of my son and, his location. He also had all the information relating my Hong Kong address and, and, and all the backgrounds I had” (Tr. at 41 and 50).

The Immigration Judge denied (b) (6) application for Cancellation of Removal holding “the biggest factor that I have before me is the fact that she stood in Immigration Court and was told that this was a serious situation and the Judge graciously gave her a 212(h) waiver and then she got arrested two more times in the next five years” (Decision at 7). Despite the credible testimony of the Respondent about the situation that faced her son, and her

# Immigration Judge Complaint Intake Form

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

**Date Received at OCIJ: April 22, 2013**

complaint source type	
<input type="checkbox"/> anonymous	<input checked="" type="checkbox"/> BIA
<input type="checkbox"/> respondent's attorney	<input type="checkbox"/> respondent
<input type="checkbox"/> third party (e.g., relative, uninterested attorney, courtroom observer, etc.)	<input type="checkbox"/> other: _____
<input type="checkbox"/> ___ Circuit	<input type="checkbox"/> EOIR
<input type="checkbox"/> OIL	<input type="checkbox"/> OPR
<input type="checkbox"/> DHS	<input type="checkbox"/> Main Justice
<input type="checkbox"/> OIG	<input type="checkbox"/> media
complaint receipt method	
<input type="checkbox"/> letter	<input checked="" type="checkbox"/> IJC memo (BIA)
<input type="checkbox"/> fax	<input type="checkbox"/> unknown
<input type="checkbox"/> email	<input type="checkbox"/> phone (incl. voicemail)
<input type="checkbox"/> other: _____	<input type="checkbox"/> in-person
date of complaint source	complaint source contact information
(i.e., date on letter, date of appellate body's decision)	name: <u>David Neal</u>
April 10, 2013	address: _____
additional complaint source details	_____
(i.e., DHS component, media outlet, third party details, A-number)	_____
(b) (6) (BIA April 10, 2013)	email: _____
	phone: _____
	fax: _____

IJ name	base city	ACIJ
IJ (b) (6)	(b) (6)	ACIJ Dee Nadkarni
relevant A-number(s)	date of incident	
(b) (6)	April 10, 2013 BIA decision	
allegations		
BIA remanded to another IJ. IJ did not consider favorable factors in respondent's case and made improper remark: "She has no value or has demonstrated no value or service to the community but for a sexual service."		
nature of complaint		
<input checked="" type="checkbox"/> in-court conduct	<input type="checkbox"/> out-of-court conduct	<input type="checkbox"/> due process
<input type="checkbox"/> incapacity	<input type="checkbox"/> other: _____	<input type="checkbox"/> bias
		<input type="checkbox"/> legal
		<input type="checkbox"/> criminal

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