



[Detail](#)

Complaint Number: 778

Immigration Judge: (b)(6)

Complaint Received Date: 07/15/13

Current ACIJ

Santoro, Christopher A.

Base City

(b)(6)

Status

CLOSED

Final Action

Complaint dismissed as merits-related

Final Action Date

07/18/13

Past ACIDS:

A-Numbers(s)	Complaint Nature(s)	Complaint Source(s)
(b)(6)	Due process	Respondent Atty (b)(6) (b)(6)

Complaint Narrative:

Complainant alleges that IJ failed to consider all of respondent's evidence in (b)(6) credible fear review and applied the wrong standard of review when conducting the hearing.

Complaint History

07/16/13	ACIJ listens to recording & speaks to the IJ
07/18/13	ACIJ speaks to the complainant via telephone
07/18/13	Complaint dismissed as merits-related
07/19/13	Database entry created
07/25/13	ACIJ communicates with attorney

Moutinho, Deborah (EOIR)

From: (b) (6)
Sent: Monday, July 15, 2013 10:52 AM
To: IJConduct, EOIR (EOIR)
Subject: Re: (b) (6) IJ Complaint - Part 2 - URGENT / Detained Case - PLS EXPEDITE!

Re: (b) (6)

Hello again,

I apologize - the previous e-mail was not complete when submitted. The following is the most critical aspect of the complaint. As noted, the IJ specifically stated that (b) (6) review of a negative credible fear interview was "limited" to the information and evidence set forth to the asylum officer. This is absolutely incorrect.

Under 8 CFR 1003.42, Review of Credible Fear Determinations, it is clear that the IJ has **DE NOVO review** of a credible fear claim. Yet, this is not what took place in this case. At both hearings, but in particular the most recent hearing, the IJ **erroneously determined that (b) (6) review was "limited" to the information and evidence previously submitted to the asylum office. This is a serious violation of the regulations in a case involving a female asylum applicant who has been detained for over SEVEN (7) months**, who has absolutely NO criminal record, and has waited such an unreasonable period of time - JUST TO HAVE such a review by an IJ. It is unconscionable that this IJ had absolutely NO interest in this fact and the many other items of frustration noted by undersigned counsel during the hearing.

Specifically, undersigned counsel and this law firm were NEVER provided notice of the initial credible fear interview, despite the fact that a Form G-28 was sent via Fedex and facsimile to DHS/ICE. Yet another credible fear interview - January 28th, was conducted with absolutely NO notice to undersigned counsel or this law firm. We repeatedly requested information on this status of this case - to no avail. We provided evidence of her credible fear claim and her fear of persecution to DHS/ICE, yet it was apparently never forwarded to the IJ. It apparently was not even forwarded to the (b) (6) Asylum Office, even though we were advised several times that it would be by Officer (b) (6) & (b) (7)(C), and others at DHS/ICE. We made numerous inquiries with the (b) (6) Asylum Office regarding this. This is all in the package submitted to the IJ - which was entirely ignored. We specifically requested a copy of the negative credible fear determination and to THIS DAY, we have yet to receive it. Most recently, we were advised that it was "up to our client" to send this critical decision to us. In more than fifteen (15) years of practice, I have NEVER heard such a remark. We have been ignored, dealt with enormous delays, and have had officers at DHS/ICE laugh at the idea that they have any responsibility or accountability to report anything to us in this case. There is caselaw which concludes that any period of detention of over six (6) months is considered excessive/indefinite. As the IJ said, these are matters beyond

(b) (6) scope or jurisdiction. Yet, this is NOT what we expected from EOIR and this IJ. It felt like our client was being "railroaded" during the review of her negative credible fear determination, rather than an adequate (never mind full) consideration of her claim of persecution.

This client may be removed any day now. There is no review of the IJ decision. We respectfully request that the office of OCIJ consider these significant allegations in a serious and expedited manner. A review of the record will show that this client did NOT receive a fundamentally fair hearing - in this, or any other possible context. We ask that a full and fair review hearing be provided as SOON as possible, and that the IJ be recused from this case, and another IJ be assigned as soon as possible so that this detained applicant for credible fear be provided a full and fair review of the credibility fear determination as soon as possible.

The case is (b) (6) Thank you for your consideration.

Respectfully submitted,

(b) (6)

The content of the attached documents may be confidential under Rules of the Supreme Court of (b) (6) or under applicable state or federal laws. The documents may also be communications between attorney and client and therefor privileged and confidential information. The documents are intended for the addressee only and anyone receiving the documents in error is directed not to read same and to return the documents to the sender by U.S. mail at the address stated on this cover sheet. Thank you.

If problems occur with this facsimile transmission, please call the office at (b) (6)

From: (b) (6)
To: "EOIR.IJConduct@usdoj.gov" <EOIR.IJConduct@usdoj.gov>
Sent: Monday, July 15, 2013 10:21 AM
Subject: Oakdale IJ Complaint

Hello,

My name is (b) (6), and I have been practicing immigration law for more than fifteen (15) years. I submit this complaint after very careful consideration, having previously worked as Judicial Law Clerk and Attorney-Advisor to the (b) (6) Immigration Court and BIA. I am fully aware

of the limitations and difficulties in hearings involving detained respondents, having worked closely with IJ's at (b) (6) and (b) (6) detention facilities years ago. However, in the instant matter, the manner in which the proceedings were conducted was fundamentally unfair and unreasonable, as well as contrary to the law. With absolutely no alternative remedy - i.e. BIA appeal - and given the implications of such actions, we respectfully file this complaint.

IJ (b) (6) conducted a hearing one (1) week ago today, on July 8th. This was a review of a credible fear denial. (b) (6) clearly laid out the parameters of the hearing - that I was an "observer" appearing by phone, and could only "consult" with my client. Unfortunately, this was the same amount of time in considering her legitimate and genuine credible fear of returning to Guatemala. Within 5 minutes, (b) (6) was making an adverse credibility finding and affirming the denial, remanding her to ICE custody for deportation/removal. Absolutely NO consideration was given to any of the facts and circumstances pertaining to her fear. (b) (6) made the adverse credibility determination based solely on the fact that the client had initially not expressed a fear, something that is typical when individuals (who may or may be educated at all, never mind on matters involving U.S. immigration or asylum laws). Our client was escaping severe persecution in the form of demonstric violence and abuse of her husband. She was provided a number of informal interviews by DHS/ICE. After this initial encounter, she did in fact set forth her fear of her husband. At a subsequent "interview," she also mentioned her fear of her husband's 2 girlfriends (with whom he has children) and their serious threats. With both members of dangerous gangs, this credible fear should have also been considered by the IJ. It was not. In fact, rather than consider this credible fear, the fact that this information was provided "piece meal" (not necessarily the fault of client), this was a factor in making the adverse credibility finding. Just prior to ordering he removal, I advised the IJ that we had submitted evidence demonstrating this fear and persecution. This evidence was not considered. In fact, it was not in the file of the IJ, so (b) (6) rescheduled the hearing 4 days later, this past Fri., July 12th, so we could submit this evidence. It was submitted the same day and received the next day by the IJ (Tuesday, July 9th) via Fedex.

At the next (and final) hearing of Friday, July 12th, once again, the IJ conducted what felt like a 5 minute "review" hearing. While acknowledging receipt of this evidence, (b) (6) affirmed (b) (6) intent to deny - and denied credible fear. At both hearing, but in particular this most recent hearing, the IJ stated that (b) (6) review was "limited" to what had been presented to the asylum officer. This is absolutely incorrect.

Sincerely,

(b) (6)

(b) (6)

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Immigration Judge Complaint Intake Form

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

Date Received at OCIJ: 7/15/2013

complaint source information	
complaint source type	
<input type="checkbox"/> anonymous <input type="checkbox"/> BIA <input type="checkbox"/> ___ Circuit <input type="checkbox"/> EOIR <input type="checkbox"/> DHS <input type="checkbox"/> Main Justice <input checked="" type="checkbox"/> respondent's attorney <input type="checkbox"/> respondent <input type="checkbox"/> OIL <input type="checkbox"/> OPR <input type="checkbox"/> OIG <input type="checkbox"/> media <input type="checkbox"/> third party (e.g., relative, uninterested attorney, courtroom observer, etc.) <input type="checkbox"/> other: _____	
complaint receipt method	
<input type="checkbox"/> letter <input type="checkbox"/> IJC memo (BIA) <input checked="" type="checkbox"/> email <input type="checkbox"/> phone (incl. voicemail) <input type="checkbox"/> in-person <input type="checkbox"/> fax <input type="checkbox"/> unknown <input type="checkbox"/> other: _____	
date of complaint source (i.e., date on letter, date of appellate body's decision)	complaint source contact information
7/15/2013	name: _____ address: (b) (6) email: _____ phone: _____ fax: _____
additional complaint source details (i.e., DHS component, media outlet, third party details, A-number)	
(b) (6)	

complaint details		
IJ name	base city	ACIJ
(b) (6)	(b) (6)	Santoro
relevant A-number(s)	date of incident	
(b) (6)	7/8/13 and 7/12/13	
allegations		
Complainant alleges that IJ failed to consider all of respondent's evidence in (b) (6) credible fear review and applied the wrong standard of review when conducting the hearing.		
nature of complaint		
<input type="checkbox"/> in-court conduct <input type="checkbox"/> out-of-court conduct <input checked="" type="checkbox"/> due process <input type="checkbox"/> bias <input type="checkbox"/> legal <input type="checkbox"/> criminal <input type="checkbox"/> incapacity <input type="checkbox"/> other: _____		

actions taken		
date	action	initials
7/15/13	Complainant sends two e-mails to IJConduct mailbox detailing nature of complaint and requesting expedited review because respondent is subject to immediate deportation. ACIJ receives e-mails from IJC mailbox. Complainant leaves voicemail messages for both ACIJ Santoro and ACIJ Keller requesting expedited action. ACIJ Santoro returns call to complainant; leaves message on office voice mail acknowledging receipt of complaint.	cas
7/16/13	ACIJ Santoro listens to recordings of the hearings. ACIJ Santoro speaks with IJ (b) (6) and asks (b) (6) to listen to both recordings and consider whether (b) (6) wishes to clarify the standard of review (b) (6) used when evaluating the evidence. IJ (b) (6) agreed to do so and follow-up via e-mail. ACIJ Santoro also speaks with complainant generally about the nature of the complaint.	cas
7/18/13	<p>ACIJ Santoro sends e-mail to IJ (b) (6) asking whether (b) (6) had listened to the recording.</p> <p>ACIJ Santoro conducted telephonic interview with complainant. Complainant reiterated the information contained in his e-mails. Essentially, he felt there were a number of procedural problems with the asylum office and ICE which he felt caused the IJ to be predisposed to find no credible fear and caused (b) (6) to give the respondent short shrift at (b) (6) hearing. He also alleged that the IJ did not fully consider the supplemental evidence he submitted. Complainant asked to submit for ACIJ review the documents he provided to the IJ. ACIJ Santoro told him he could submit the documents, but that the review would be to determine whether the IJ's handling of the case followed the regulations, not whether the ACIJ would have reached the same result.</p> <p>ACIJ Santoro received and reviewed documents provided by complainant.</p> <p>RESOLUTION: Dismissed/merits-based.</p> <p>Complainant notified via e-mail.</p>	cas

Moutinho, Deborah (EOIR)

From: Keller, Mary Beth (EOIR)
Sent: Thursday, July 25, 2013 5:14 PM
To: Moutinho, Deborah (EOIR)
Subject: FW: (b) (6)

On the (b) (6) complaint

MaryBeth Keller

Assistant Chief Immigration Judge

From: Santoro, Christopher A (EOIR)
Sent: Thursday, July 25, 2013 10:50 AM
To: Rosenblum, Jeff (EOIR)
Cc: Keller, Mary Beth (EOIR); Rosen, Scott (EOIR)
Subject: FW: (b) (6)

Jeff,

FYI

Chris

Christopher A. Santoro
Assistant Chief Immigration Judge

From: Santoro, Christopher A (EOIR)
Sent: Thursday, July 25, 2013 10:49 AM
To: (b) (6)
Subject: RE: (b) (6)

(b) (6)

The filing of a complaint against an immigration judge does not necessarily result in that judge's automatic recusal from future proceedings in a case. If it did, either side would be able to engage in *de facto* forum shopping by filing complaints against IJ(s) before whom they do not want to appear. Immigration judge complaints are resolved by the Office of the Chief Immigration Judge, not the EOIR General Counsel. However, if you wish to contact the general counsel, his contact information is available on the EOIR web site.

Christopher A. Santoro
Assistant Chief Immigration Judge

From: (b) (6)
Sent: Tuesday, July 23, 2013 3:49 PM
To: Santoro, Christopher A (EOIR)
Subject: Re: (b) (6)

Your Honor,

As an update, we filed the attached Motion to Reconsider with the IJ in (b) (6) this past Friday. I called to check on it today, and an EOIR clerk advised that a decision was mailed out yesterday in the case. When I asked if it was denied, she said she could "not tell me." When I asked why and reminded her we had filed an EOIR-28 and that I am the attorney of record in the case, she suggested I contact ICE. ICE has nothing to do with this motion. So, a critical decision in this case has been sent, no doubt via snail mail, in a detained case. Checking the 800# with no future hearing date, we can only assume (b) (6) denied our motion. I have no idea why this information could not be provided by phone - in a critical and urgent detained case. This seems odd, and an issue where the staff may need some training.

So, we will now be filing a Motion to Recuse. It is inconceivable that both a motion to reconsider and a motion to recuse must be filed with the same IJ when (b) (6) is clearly aware of the fact that we filed a complaint with EOIR OCIJ. There must be some consideration of this critical issue by EOIR. I would appreciate an opportunity to speak with EOIR General Counsel on this issue. When such a complaint is filed, shouldn't any subsequent pleading go before another IJ? In almost 18 years, I never filed such a complaint, and I cannot imagine that there is no such procedure in place. We await your response. Thank you in advance.

Sincerely,

(b) (6)

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If problems occur with this facsimile transmission, please call the office at (b) (6)

From: "Santoro, Christopher A (EOIR)" <Christopher.A.Santoro@usdoj.gov>

To: (b) (6)

Sent: Thursday, July 18, 2013 4:59 PM

Subject: (b) (6)

Attorney (b) (6)

This e-mail responds to your e-mails of July 15, 2013 regarding your client (b) (6)

(b) (6) I have reviewed your e-mails; the information you provided in our telephone conversations of July 16 and 18, 2013; the audio recordings of the hearings conducted on July 8 and 12, 2013; and the documents you submitted via e-mail on July 18, 2013. As I mentioned on the telephone, while I understand your concerns about the processing of this case before it was referred to the immigration court, those matters are more properly raised to someone with oversight authority over those agencies.

With regard to the court hearings and the decision rendered by the immigration judge, I understand your concern to be that the immigration judge may have applied an incorrect legal standard and/or may have failed to consider fully the evidence you submitted. I note that the judge did, in fact, reference the documents you submitted (and their contents) and concluded that the information contained therein would not provide a basis to vacate the decision of the asylum officer. While you may wish to raise your concerns with the judge (via a motion to reconsider or other pleading supported by applicable law and argument), as an ACIJ I cannot direct the result of an adjudication by another judge (8 CFR 1003.9(c)) nor interfere with an immigration judge's independent decision making (8 CFR 1003.10(b)). Finally, please note that motions to recuse should be filed on the record, or in writing, with the immigration judge (see generally OPM 05-02).

Christopher A. Santoro
Assistant Chief Immigration Judge