



## Detail

Complaint Number: 758

Immigration Judge: (b)(6)

Complaint Received Date: 06/07/13

Current ACIJ  
Davis, John W.

Base City  
(b)(6)

Status  
CLOSED

Final Action  
Complaint concluded --  
corrective action already taken

Final Action Date  
06/25/13

**Past ACIJ:**

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

Complaint Narrative: (b)(6) [redacted] IJ granted R voluntary departure when it had not been requested, additionally IJ's credibility determination is unclear.

### Complaint History

06/07/13	Complaint referred to ACIJ
06/07/13	Database entry created
06/25/13	Complaint concluded -- corrective action already taken

Sep 11, 2013

1 of 1

# Immigration Judge Complaint Intake Form

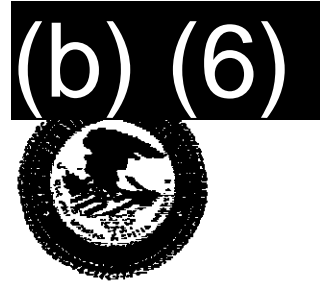
**HQ Use Only:**  
complaint #: \_\_\_\_\_  
source: first / subsequent

**Date Received at OCIJ: 6 June 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) 30 May 2013	name: _____
additional complaint source details (i.e., DHS component, media outlet, third party details, A-number)	address: _____
	_____
	_____
	email: _____
	phone: _____
	fax: _____

IJ name	base city	ACIJ
(b) (6)	(b) (6)	John W. Davis
relevant A-number(s)	date of incident	
A(b) (6)	Oct 27, 2011	
allegations		
IJ granted Respondent Voluntary Departure when it had not be requested, additionally IJ's credibility determination is unclear.		
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

[illegible]



# Memorandum

Subject	Date
(b) (6) (b) (6) (BIA May 30, 2013)	June 6, 2013

To  
Brian O'Leary, Chief Immigration Judge  
MaryBeth Keller, Assistant Chief Immigration Judge

From  
David L. Neal, Chairman

Attached please find a copy of the Board's decision dated May 30, 2013, and relevant portions of the record in the above-referenced matter.

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

This case will be held in Suzette Henderson's office for one week. If you wish to review the record, 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: MAY 30 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)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] -  
In the United States in violation of law

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Mexico, appeals the Immigration Judge's decision dated October 27, 2011. The Immigration Judge denied the respondent's applications for asylum and withholding of removal pursuant to sections 208(a) and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(a) and 1231(b)(3), respectively, and his request for protection under the Convention Against Torture. The appeal will be dismissed.

First, we agree with the Immigration Judge that the respondent's asylum application did not meet the 1-year filing deadline (I.J. at 8-9). *See* section 208(a)(2)(B) of the Act. However, even accepting the respondent's argument that he should not be time-barred from asylum given the existence of "changed circumstances" in Mexico, he has not established eligibility for relief (Respondent's Br. at 3). Next, while Immigration Judge's decision is somewhat unclear on the issue of credibility, we need not address this issue as we find that the respondent, even if deemed credible, has not met his burden of proof for relief (I.J. at 8). *See* section 208(b)(1)(B)(iii) of the Act (the applicant shall have a rebuttable presumption of credibility on appeal in the absence of an explicit adverse credibility finding); *see also* 8 C.F.R. §§ 1003.1(d)(3)(i)-(ii) (the Board reviews an Immigration Judge's factual and credibility findings for clear error and reviews *de novo* his legal conclusions).

On appeal, the respondent contends that he has a well-founded fear of persecution from mafia groups and drug cartels due to his membership in a particular social group, which is based on his status as a "repatriating national from [the] United States" (Respondent's Br. at 3-4). However, he has not refuted the Immigration Judge's finding that he did not establish any prior harm or past persecution (I.J. at 9). Further, he has not substantively addressed the Immigration Judge's holding that he did not present a valid claim predicated on any statutory ground under the Act (I.J. at 10-11). *See* section 208(b)(1)(B)(i) of the Act (stating that one of the statutory grounds of the Act must be at least one central reason for the claimed persecution). In particular,

while the respondent contends that his family in Mexico receives threats from unknown individuals demanding money and that he is fearful of returning there because he would be perceived as wealthy, he has failed to show that his fears are tied to a requisite nexus under the Act (Respondent's Br. at 2). See *INS v. Elias-Zacarias*, 502 U.S. 478 (1992); *Matter of S-E-G*, 24 I&N Dec. 579, 582-588 (BIA 2008); see also *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 75-77 (BIA 2007) (holding that belonging to a group consisting of affluent Guatemalans did not establish sufficient social visibility or particularity to constitute a valid social group); *Rivera-Barrientos v. Holder*, 666 F.3d 641, 649 (10th Cir. 2012) (quoting *Matter of A-M-E- & J-G-U-*, *supra*, at 76). As the respondent's contentions on appeal are insufficient in meaningfully challenging the Immigration Judge's decision, we conclude that he has not established any legal or clear factual error in the Immigration Judge's order. See *Matter of A-S-*, 21 I&N Dec. 1106, 1112 (BIA 1998) (the applicant bears the burdens of proof and persuasion for relief).

In sum, even presuming that the respondent is statutorily eligible to seek asylum, he did not meet his burden of proof for such relief or for withholding of removal under the Act. We also note that the respondent has not raised any substantive claim on appeal for protection under the Convention Against Torture and, as such, that application is not properly before us (I.J. at 12-13). See *Matter of Cervantes*, 22 I&N Dec. 560, 561 n.1 (BIA 1999) (expressly declining to address an issue not raised by a party on appeal). Further, although the respondent requests a remand "for a review by the government under the prosecutorial discretion guidelines," the Board and the Immigration Judges do not have authority to influence or require the Department of Homeland Security to exercise its discretion in determining which cases to prosecute (Respondent's Br. at 4). See, e.g., *Matter of E-R-M- & L-R-M-*, 25 I&N Dec. 520 (BIA 2011). Based on the foregoing, we conclude that the respondent has raised no arguments on appeal which would cause us to reverse the Immigration Judge's decision or to remand the matter for further proceedings. We also note that the Immigration Judge granted the respondent voluntary departure. However, the record reflects that the respondent did not request voluntary departure prior to the Immigration Judge's grant of such relief (I.J. at 13-14; Respondent's Br. at 3). Accordingly, the respondent's appeal will be dismissed and the period of voluntary departure will not be reinstated.

ORDER: The respondent's appeal is dismissed.



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 10/27/11.  
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 alternative to .

- [ ] Respondent's application for voluntary departure was granted until 12-27-11 upon posting a bond in the amount of \$ 500 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 the right to appeal and failure to appear as ordered in the Immigration Proceedings.  
[ ] Proceedings were terminated.  
[ ] Other: \_\_\_\_\_

Date: Oct 27, 2011

Appeal: Waived/Reserved Appeal Due By:

11-28-11

(b) (6)

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

(b) (6)

File No.: A (b) (6)

Date: October 27, 2011

In the Matter of

(b) (6)

Respondent

)  
)  
) IN REMOVAL PROCEEDINGS  
)  
)

CHARGE:

APPLICATIONS: Asylum, withholding under Section 241(b)(3) and  
withholding under the Torture Convention.

ON BEHALF OF RESPONDENT:

(b) (6)

ON BEHALF OF DHS:

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

ORAL DECISION OF THE IMMIGRATION JUDGE

This matter comes before the Court today as a result of the Form I-862, which is the Notice to Appear in removal proceedings, which was issued to the respondent by the U.S. Immigration and Naturalization Service, now known as Homeland Security, on June 17, 2009. At that time, Homeland Security indicates that the respondent is removable pursuant to Section 237(a)(1)(B) of the Immigration and Nationality Act, as amended, in that after



admission as a nonimmigrant under Section 101(a) of the Act, he remained in the United States for a time longer than that which is permitted in violation of this Act or any other law of the United States.

The Court would indicate that at a prior Master Calendar hearing on June 30, 2010, the respondent was present with his attorney. His attorney admitted and conceded removability on behalf of the respondent. Removability has been shown by clear, convincing and unequivocal evidence.

The Court would indicate that the respondent seeks relief in the form of asylum pursuant to Section 208 of the Act, withholding of removability pursuant to Section 241(b)(3) of the Act and relief under the United Nations Convention against Torture (CAT) in regards to his native country of Mexico. In the alternative, the respondent has requested voluntary departure pursuant to Section 240B of the Act.

The Court would indicate the Court has received from (b)(6) (b)(6) & (b)(7)(C) the Country Reports on Human Rights Practices from Mexico. The Court was given this documentation and (b)(6) has also been given it. It has been admitted into evidence, marked as an exhibit. The Court would indicate that previously the Court had only received an application for asylum on this matter. This morning, (b)(6) did in fact find out that they still had the letters from the mother. Those letters were given to the Court by my secretary regarding the situation in Mexico. The Court

would indicate that the Court will admit them into evidence and the Court will in fact give them the weight that the Court feels is appropriate in this particular matter. They have been marked as exhibits and are part of the record.

#### STATUTORY REQUIREMENTS FOR ASYLUM

##### DEFINITION OF A REFUGEE

Under Section 208 of the Immigration and Nationality Act, the Attorney General through an Immigration Judge may grant asylum as a matter of discretion to an individual who is deemed to be a refugee within the meaning of Section 101(a)(42) of the Act. This provision requires the respondent show that he is unable or unwilling to return to his native country or country of last habitual residence if no such native country exists and he is unable or unwilling to avail himself the protection under that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion. This is under Immigration and Nationality Act Section 101(a)(42)(A). It is also under INS v. Cardoza-Fonseca, 480 U.S. 421 (1987).

##### PAST PERSECUTION

An applicant who establishes past persecution is presumed to have a well-founded fear of future persecution based on the same claim. The presumption of a well-founded fear of future persecution can be rebutted by the Government if he shows by a preponderance of the evidence that either (a) there has been a

fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in the applicant's country of nationality or, if stateless, the applicant's country of last habitual residence on account of race, religion, nationality, membership in a particular social group or political opinion or (b) if the applicant could avoid future persecution by relocating to another part of the applicant's country of nationality or, if stateless, another part of the applicant's country of last habitual residence and under all the circumstances, it would be reasonable to expect the applicant to do so.

In cases in which the persecutor is the government or government sponsor or the applicant has established persecution in the past, it shall be presumed that internal relocation would not be reasonable unless the Government established by a preponderance of the evidence that under all the circumstances it would be reasonable for the applicant to relocate.

#### WELL-FOUNDED FEAR

In order to establish a well-founded fear of persecution, an alien must (1) show that he possess a belief or characteristic his persecutor seeks to overcome in others by means of punishment of some sort; (2) that the persecutor is already aware or could become aware that the alien possesses that belief or characteristic; (3) that the persecutor has the capability of punishing the alien; and (4) that the persecutor has the

inclination to punish the alien. Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987).

The United States Supreme Court has held that the well-founded fear standard requires a showing that the fear of persecution is based on a reasonable possibility that such harm will occur. The standard is more generous than the clear probability standard applicable to withholding of removability.

#### PERSECUTION

Persecution is not defined in the Act, but includes both the actual infliction of physical harm which is torture, prolonged detention, denial of an opportunity to earn a livelihood, restrictions on life and liberty and the fear that such harm will be imposed. This is under INS v. Stevic, 467 U.S. 407 (1984). The persecutory act must be carried out by the persecutor to punish the victim for possessing a belief or characteristic the persecutor seeks to overcome. Matter of Acosta, 19 I&N Dec. 211 (BIA 1985).

Persecution will only provide a basis for asylum if it is inflicted at the hands of the government or group which the government is unable or unwilling to control. The persecution must have been or will be in the future carried out on account of one of the five enumerated grounds found in Section 101(a)(42) of the Act. This means the victim's race, religion, nationality, membership in a particular social group or political opinion was or will be at least one of the central reasons for persecuting

the applicant. Matter of Chen.

#### PAST PERSECUTION

Statutory eligibility for asylum can be established by showing a past persecution. If an applicant establishes that he has been persecuted in the past on account of the five enumerated grounds in the statute, race, religion, nationality, membership in a particular social group or political opinion, he is eligible for a grant of asylum and a likelihood of present or future persecution then becomes relevant and so the exercise of discretion in asylum may be denied as a matter of discretion of there was very little likelihood of present or future persecution. Favorable exercise of administrative discretion in an asylum application may be warranted for humanitarian reasons notwithstanding the fact that there is little likelihood of future persecution. This is Matter of Chen, 20 I&N Dec. 16 (BIA 1989).

An asylum applicant may be granted relief if he is able to demonstrate a compelling reason for being unwilling or unable to return to the proposed country of removal arising out of the severity of the past persecution. Alternatively, an applicant who has demonstrated that he has suffered persecution in the past may be eligible for a favorable grant of discretion if he cannot demonstrate that there is a reasonable possibility that he would suffer other serious harm upon removal to the proposed country of removal.

## BURDEN OF PROOF

The burden of proof is on the applicant to establish that he is a refugee as defined in Section 101(a)(42) of the Act. The applicant must demonstrate that the applicant's fear of persecution is both subjectively genuine and objectively reasonable. In some cases only available evidence of the alien's subjective fears may be the alien's only testimony can suffice if the testimony is believable, consistent and sufficiently detailed to provide a plausible and coherent account of the basis of the alien's fears. The Court would indicate that the Board has held that an asylum applicant bears the evidentiary burden of proof and persuasion and where there are significant meaningful evidentiary gaps, the asylum applicant's applications will ordinarily be denied for failure of proof.

## COUNTRYWIDE PERSECUTION

The applicant must show that the fear of persecution for him exists countrywide. This is Matter of Fuentes, 19 I&N Dec. 658 (BIA 1988).

## THE ONE-YEAR BAR

An asylum application must be filed within one year of the alien's last arrival in the United States unless the alien can demonstrate to the satisfaction of the Court that either (a) existence of changed circumstances which materially affect the applicant's eligibility for asylum or (b) extraordinary circumstances relating to the delaying of filing an application

for asylum within the one year of last arrival.

In this particular matter the respondent has indicated that first of all he did not know he could file for asylum. Secondly he indicated that things were changing in Mexico and that is the reason why he filed. He filed in 2010, which was approximately two years after he entered the United States. The Court would indicate that the Court has listened to his testimony, has listened to the explanation he has given regarding why he did not file within the one-year time period. The Court would indicate the Court believes that the respondent has not shown the Court that there are extraordinary circumstance for not filing within the one-year statute. The Court would in fact at this time deny asylum because of the one-year statute and not complying with that.

#### CREDIBILITY

The Court observed the respondent's testimony and demeanor throughout the proceedings and the Court believes that the situation in Mexico is in fact bad. Everybody knows that cartels are causing problems. I think that was credible. Whether in fact he did not suffer any persecution in the past and whether or not his family has been suffering anything at all. There are letters that were given to the Court at this time that were just given to the Court today. The Court has had an opportunity to read them. The mother has indicted that there are problems in Mexico. The Court knows that.

The Court would indicate that the respondent, one of his reasons for not filing within the one-year statute was that things were getting worse. Things have been bad in Mexico for long before the 2008 year and like I said, she has indicated that they have threatened her and asked her for money. At this time they have not been physically harmed. The respondent was never harmed in Mexico and never persecuted in that time. He did not have past persecution.

Again, documentary evidence, all we have is the State Department Report and the letters that were given to the Court and again the Court indicate the Court has given those letters the appropriate weight and has read the State Department Report regarding the gangs and the cartel in that particular country.

The Court does not deny that the respondent, again this is regarding the 208, wants to remain in the United States, but again the Court would indicate that the respondent has not shown that there is extraordinary circumstances for not filing within the one year statute, so the asylum will be under form I-589(b) denied at this time.

The Court would also indicate that the Court will now go to whether in fact the respondent qualifies under Section 241(b)(3) of the Act and withholding under the Torture Convention Act. The Court would indicate that there has been numerous cases in the past indicating that civil unrest in and of itself is not sufficient and that is exactly what the situation in Mexico at



this time.

The Court would indicate that the respondent basically indicates that he was born in Mexico, that he went to high school but did not finish, that his mother and two siblings, a brother and a sister still live in Mexico, that his father died when he was young. That he first came to the United States was in 1998 on vacation and also to go to school. He came in February 2008 to the United States, left, came back in June of 2008. He has not left since that time. His brother, sister and mother all reside in Mexico. She is a doctor. He has a daughter in the United States that is eight months old. His wife is here illegally like he is at this particular time. He indicates that his fear is taking her back to that situation with the gangs and the cartel. That is the reason why he does not want to go back at this particular time.

He indicates that people that come from the United States are seen as people that have money. The cartels go after them. He has one case that he pled to harassment, a domestic violence type situation where him and his wife got into a fight approximately two years ago. He has completed that particular situation. He indicates that his mother does get phone calls verbally harassing her and asking her for money and basically that is it.

The Court would indicate for withholding of removability under 240(b)(3), the respondent's request for asylum in the

United States is contemporaneously viewed as an application for withholding of removability. In order to establish eligibility for withholding of removability, the respondent must show that his or her life or freedom would be threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group or political opinion.

Under INS v. Stevic, the statutory provision requires respondent to demonstrate a clear probability of persecution on account of one of the five protected grounds enumerated in the Act. This clear probability standard requires the showing that it is more likely than not the alien would be subject to persecution. Thus, the standard for withholding of removal is more stringent than the well-founded standard for asylum.

The Court would indicate that inasmuch as respondent has failed to show or failed to satisfy the lower burden of proof required for asylum, it follows that he has also failed to satisfy the clear probability standard of the eligibility required for withholding of removability. The evidence does not establish that if he were now to return to Mexico it is more likely than not he would be subject to persecution on account of one of the five grounds specified in Section 241(b)(3) of the Act.

Under the United Nations Convention against Torture, an alien may not be removed to a country if the alien establishes that it is more likely than not that he will be tortured if

removed to the country. The proof is in the applicant and the Court should consider all evidence relevant to the possibility of future persecution.

Again, the Court would indicate that the Court understands the situation in Mexico. It is not good, but the Court would also indicate that there are numerous cases throughout the years and I have indicated that civil unrest is not in itself sufficient. The respondent never suffered persecution in Mexico when he was there. He is now indicating that his family has been harassed and that he is afraid to go back because of that.

The Court would indicate that torture is defined as any act by which severe pain or suffering, whether mental or physical, is intentionally inflicted on a person for such purposes as obtaining from him information or a confession, punishing him for an act that a third person committed or intimidating a person or a third person or for any reason based on discrimination of any kind when such pain or suffering is inflicted by or by instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

The Court would indicate in this particular matter that the Court has the State Department Report. The Government of Mexico is in fact fighting the drug cartels. They arrest people repeatedly. They fight them on the streets when they are killing people. So the Court believes that the Government is not out to persecute the respondent in this particular matter. The Court

would indicate that the Court again would state that the respondent has failed to demonstrate the harm he fears constituting torture by the government or by someone acting on the government's behalf. The Court would indicate that again the documentary evidence was not sufficient. The Court understands that the situation in Mexico is bad.

The Court would indicate that in light of the foregoing and after considering all testimony and all documentary evidence of record, the following orders shall be entered.

#### ORDERS

WHEREFORE IT IS ORDERED that the respondent's application for political asylum pursuant to Section 208 of the Act be denied.

WHEREFORE IT IS FURTHER ORDERED that the respondent's application for withholding of removability pursuant to Section 241(b)(3) of the Act be denied.

WHEREFORE IT IS FURTHER ORDERED that the respondent's request for relief under the United Nations Convention against Torture be denied.

The Court would in fact grant voluntary departure at this time. The voluntary departure will be for the statutory time period that I give him, which is 60 days until December 27, 2011. The respondent must leave the United States on or before that date or voluntary departure will not be available to him and the alternate order to Mexico will be reinstated. The respondent

must in fact pay a departure bond of \$500 within six working days from today to the Immigration and Naturalization Services. If the respondent does not leave on or before December 27, 2011, again, voluntary departure will be taken away. He will be subject to a penalty of not less than \$1,000, not more than \$5,000. He will be ineligible for a period of ten years to receive cancellation of removal, adjustment of status, registry, voluntary departure or a change in non-immigrant status. If he asks the Court at a later date to look at this matter again, the Court would indicate the Court will take away voluntary departure and will impose an alternate order to Mexico to be removed from the United States.

(b) (6)

Immigration Judge

A (b) (6)

October 27, 2011

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.

Rebecca Hock / TC  
Rebecca Hock, Transcriber  
Free State Reporting, Inc.

December 19, 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.

The court then issued a decision denying asylum but granted voluntary departure (despite the fact this was not requested). The court's decision will be discussed in more depth in the legal argument below.

### **Legal Argument**

#### **Late Filing**

Respondent in this case is requesting the relief of political asylum and withholding of removal. The first issue is the late filing of his political asylum application. He arrived in the United States with a visitor visa June of 2008. The application for asylum was not filed until June of 2010. The respondent urges that the court should consider the "changed circumstances" that had occurred in Mexico as a result of the drug wars, the cartels/Mexican Mafia and the corruption which is rampant in much of the Mexican government and police force. Respondent had visited the United States previously, but on this particular visit he stayed longer than he was legally allowed because of his growing fears about what was happening in Mexico. The record includes numerous letters from his mother, explaining the problems that she and his brother sister were having in Mexico, as well as outlining the brutality and murder that was occurring in her hometown. It was only after matters grew to an intolerable level respondent talk to file for the asylum relief. Respondent also testified about specific problems that his fellow workers and friends from United States had endured on a trip Mexico. The letter argued that his filing was only one year late and that the filing could be considered under 8 CFR 208.4 (a)(4).

#### **Asylum/Withholding**

The letters from respondents' mother, which were admitted in the record, contain numerous and repeated warnings to the respondent about the circumstances in his hometown. The respondent testified that he speaks with his mother on a weekly basis, and that she continually warns him not to come to Mexico. He is concerned that he will be singled out as a repatriating national from United States. He is fearful that as a member of this particular social group, he will be targeted. This fear is corroborated by the experience of coworkers and friends who recently traveled to Mexico and were accosted and robbed. The law is clear that an asylum applicant must only show that he has a well-founded fear of persecution upon his return to his home country. Respondent in this case clearly meets the subjective test in that he has actual fear of returning to his home country. The objective basis for the respondents fear in this case is more problematic but still has been proven. Respondent must only show that a "reasonable person in his circumstances with fear persecution". The quantum of proof must only be a

# REQUEST FOR PERSONNEL ACTION

(b) (6)  
**COPY**

1. Actions Requested Conversion to Temporary Employee NTE (b) (6) Settlement Agreement	2. (b) (6)
3. For Additional Information Call (Name and Telephone Number) (b) (6)	4. (b) (6)

5. Action Requested By (Typed Name, Title, Signature, and Request Date) (b) (6)	6. Action Authorized by (Typed Name, Title, Signature, and Concurrence Date) Brian M. O'Leary CIJ
--	---

## PART B - For Preparation of SF 50 (Use only codes in FPM Supplement 292-1. Show all dates in month-day-year order.)

1. Name (Last, First, Middle) (b) (6)	2. Social Security Number (b) (6)	3. Date of Birth (b) (6)	4. Effective Date (b) (6)
--	--------------------------------------	-----------------------------	------------------------------

FIRST ACTION		SECOND ACTION	
5-A. Code	5-B. Nature of Action	6-A. Code	6-B. Nature of Action
5-C. Code	5-D. Legal Authority	6-C. Code	6-D. Legal Authority
5-E. Code	5-F. Legal Authority	6-E. Code	6-F. Legal Authority

7. FROM: Position Title and Number Immigration Judge (Permanent)  EIRJCS					15. TO: Position Title and Number Immigration Judge (Temporary NTE (b) (6))						
8. Pay Plan IJ	9. Occ. Code (b) (6)	10. Grade or Level	11. Step or Rate	12. Total Salary	13. Pay Basis	16. Pay Plan (b) (6)	17. Occ. Code (b) (6)	18. Grade or Level	19. Step or Rate	20. Total Salary/Award	21. Pay Basis
12A. Basic Pay	12B. Locality Adj.	12C. Adj. Basic Pay	12D. Other Pay	20A. Basic Pay	20B. Locality Adj.	20C. Adj. Basic Pay	20D. Other Pay				
14. Name and Location of Position's Organization (b) (6)						22. Name and Location of Position's Organization (b) (6)					

23. Veterans Preference 1 - None 3 - 10-Point/Disability 5 - 10-Point/Other 2 - 5-Point 4 - 10-Point/Compensable 6 - 10-Point/Compensable/30%				24. Tenure 0 - None 2 - Conditional 1 - Permanent 3 - Indefinite		25. Agency Use		26. Veterans Pref for RIF YES NO	
27. FEGLI				28. Annuitant Indicator		29. Pay Rate Determinant			
30. Retirement Plan				31. Service Comp. Date (Leave)		32. Work Schedule		33. Part-Time Hours Per Biweekly Pay Period	

34. Position Occupied 1 - Competitive Service 3 - SES General 2 - Excepted Service 4 - SES Career				35. FLSA Category E - Exempt N - Nonexempt		36. Appropriation Code		37. Bargaining Unit Status	
38. Duty Station Code (b) (6)				39. Duty Station (City - County - State or Overseas Location) (b) (6)					

40. Agency Data	41.	42.	43.	44.		
45. Educational Level	46. Year Degree Attained	47. Academic Discipline	48. Functional Class	49. Citizenship 1 - USA 6 - Other	50. Veterans Status	51. Supervisory Status

## PART C - Reviews and Approvals (Not to be used by requesting office.)

1. Office/Function	Initials/Signature	Date	Office/Function	Initials/Signature	Date
A. ELR/OGC	Rena Schenck	(b) (6)	D.		
B. OGC/xo	SOA	(b) (6)	E.		
C.			F.		

2. Approval: I certify that the information entered on this form is accurate and that the proposed action is in compliance with statutory and regulatory requirements.	Signature	Approval Date
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**SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT**

This Settlement and Release of Claims Agreement ("Agreement") is entered into by the Parties: Immigration Judge (b) (6) the National Association of Immigration Judges ("NAIJ"), and the Executive Office for Immigration Review, United States Department of Justice (the "Agency") (collectively "the Parties").

**Background**

- On November 5, 2012, (b) (6) was placed on a performance improvement plan ("PIP"). The PIP detailed performance deficiencies in Job Element 1 (Legal Ability) and Job Element 3 (Accountability for Organizational Results) of (b) (6) performance work plan (PWP). The PIP was initially scheduled to be a 120-day opportunity period, but it was extended two weeks because (b) (6) was out of the office unexpectedly on sick leave during the opportunity period. The PIP opportunity period expired on (b) (6) (b) (6).
- On or around (b) (6) after reviewing (b) (6) performance during the opportunity period, (b) (6) immediate supervisor informed (b) (6) and (b) (6) NAIJ representative that (b) (6) performance had not improved to a minimally satisfactory level, i.e., "Improvement Needed" level, in Job Element 1 (Legal Ability) and Job Element 3 (Accountability for Organizational Results).

(b) (6)  
EK WD RS

- Because the Agency had determined that (b) (6) performance was not at the minimally satisfactory level at the conclusion of the PIP opportunity period, the Agency was preparing to initiate a proposed removal action against (b) (6)

### Terms of Agreement

Under this Agreement, the Parties hereby agree to the following terms and conditions:

I. In consideration of the promises set forth below, (b) (6) and NAIJ hereby agree to the following undertakings:

(a) (b) (6) signature on this Agreement signifies (b) (6) voluntary conversion from (b) (6) permanent position as an Immigration Judge at the (b) (6) Immigration Court, to a temporary appointment as an Immigration Judge at the (b) (6) Immigration Court that will expire on (b) (6) (b) (6). This temporary position will be at (b) (6) current grade (b) (6) and rate of pay, and will include the benefits to which (b) (6) currently entitled. On (b) (6), this temporary appointment will expire, and (b) (6) will be separated from the Agency and the Federal service. Within 30 days of the effective date of this Agreement, the Agency will prepare a Standard Form (SF) 52 documenting the conversion date as the effective date of this Agreement. Nothing in this agreement shall be deemed to effect, alter, amend, or waive (b) (6) entitlement to receive full retirement benefits for which (b) (6) eligible upon the date of expiration of (b) (6) temporary appointment to the same extent (b) (6) would have received them had (b) (6) remained in a non-temporary employment status.

(b) (b) (6) and NAIJ voluntarily waive any and all requests for Equal Employment Opportunity ("EEO") counseling, and any complaints, grievances, charges, appeals, or claims (b) (6)

(b) (6)

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or it has filed, claim to have filed, or may file in the future with any arbitrator, court, or administrative agency, including but not limited to Equal Employment Opportunity Commission ("EEOC") and the Merit Systems Protection Board ("MSPB"), relating to or arising from (b) (6) employment, including (b) (6) temporary appointment, with the Agency at any and all times prior to and including the effective date of this Agreement. In the event any EEO complaint, MSPB appeal, grievance, or any other claim arising out of (b) (6) employment, prior to and including the effective date of this Agreement, is filed, (b) (6) and NAIJ agree that it also is covered and resolved by the terms of this Agreement.

Additionally, this Agreement resolves all disputes, all issues, and all disagreements between (b) (6) NAIJ, and/or the Agency, arising out of or connected with the facts of (b) (6) employment with the Agency up to and including the effective date of this Agreement.

(c) (b) (6) and NAIJ, now and forever, fully and finally release, acquit and forever discharge the Agency, all present and former officials, officers, agents, or employees of the Agency (collectively referred to as "Releasees") from any and all claims, demands, rights of action, causes of action, lawsuits, judgments, claims for costs, attorneys' fees, damages, losses, expenses, or claims of any other character, in law or equity, which (b) (6) or (b) (6) heirs, executors, administrators, or assigns; or NAIJ; have brought, or could have brought, against Releasees, that relate to or arise from (b) (6) employment with the Agency, at any and all times prior to and including the effective date of this Agreement. Nothing in this Agreement shall be deemed to waive claims that any reasonable person could not have known or foreseen at the time of this Agreement, which arise after the effective date of this Agreement.

(b) (6)  
EJW JWD RS