



## Detail

Complaint Number: 757

Immigration Judge: (b)(6)

Complaint Received Date: 06/07/13

Current ACIJ  
Fong, Thomas Y. K.

Base City  
(b) (6)

Status  
CLOSED

Final Action  
Oral counseling

Final Action Date  
06/21/13

Past ACJIS:

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

**Complaint Narrative:** (b) (6) after review of referred portions of the record appears to indicate the BIA had concerns with how the U questioned and reacted to an unrepresented alien with minimal education who failed to answer questions.

### Complaint History

06/07/13	Complaint referred to ACIJ
06/07/13	Database entry created
06/21/13	Oral counseling

# Immigration Judge Complaint Intake Form

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

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

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

IJ name	base city	ACIJ
(b) (6)		Thomas Y.K. Fong
relevant A-number(s)	date of incident	
A(b) (6)	Feb 25, 2013	
allegations		
<p>The BIA in a de novo review of an Asylum Only, I-863 charging document although affirming the IJ on all (b) (6) legal findings in denying asylum, withholding of removal and CAT nevertheless referred the case to the CIJ for review. The BIA included in the referral relevant portions of the record which included its ruling, the IJ's oral decision, excerpts of the transcript of hearing on 2/25/2013 (where the IJ questioned the <i>pro se</i> respondent on his persecution claim), a portion of the respondent's I-589 appl and the declaration of sworn statement given to DHS. Review of these referred portions of the record appears to indicate the BIA's concern with how the IJ questioned and reacted to an unrepresented alien with minimal education who consistently failed to answer questions put forth by the IJ. These failures to respond could have been intentional, interpreter issues, or due to the respondent having trouble understanding the questions put to him due to a limited education or lack of legal sophistication.</p>		
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"/> bias	<input type="checkbox"/> legal	<input type="checkbox"/> criminal
<input type="checkbox"/> incapacity	<input type="checkbox"/> other: _____				




CONFIDENTIAL MEMORANDUM

To: ACIJ Mary Beth Keller  
 From: ACIJ Thomas Fong  
 Date: June 20, 2013  
 Re: A (b) (6) (IJ (b) (6)) BIA referral

I. Background

This is a BIA referral of IJ (b) (6) action and conduct in an Asylum Only, Form I-863 charging document of a hearing held 2/25/13. The BIA affirmed the IJ's findings, but referred the matter the CIJ attaching portions of the hearing transcript for review. The ACIJ reviewed not only what was referred by the BIA, but also listened to other portions of the DAR record to discern the overall circumstances, tone, demeanor, voice levels, etc. in order to see if I could detect anything else not apparent from the typed transcript itself.

II. Analysis of Respondent's and IJ (b) (6) Actions, Tone & Demeanor

IJ (b) (6) did not raise (b) (6) voice at any time during any of the questioning. (b) (6) did not overtly express frustration, impatience or anger, but it appeared to come out in the words (b) (6) used in questioning his failure to be responsive to the questions put to him. I recognized that (b) (6) tone was even and the same that I have heard from other DAR reviews of (b) (6) cases, but (b) (6) questions were often rhetorical in nature and in one instance clearly gratuitous. Although it was quiet and calm proceeding, one got the impression that the IJ, although being diligent and insuring the Asylum Only hearing covered all aspects of the law, was trying to get the respondent to move the case along as expeditiously as possible. IJ (b) (6) was already aware of Respondent's numerous entries and removals of the past and his long residence albeit unlawfully stay in Mexico despite his claim of asylum from his country of Guatemala. This was particularly noticeable when the following questions and statements were made, but it is felt throughout the hearing as I listened to the DAR not included in this limited portion of the transcript referred by the BIA:

1. "Do you understand the question?" and "Then answer it" on page 8.
2. "Well, sir, there's a lot of things you don't know" on page 13.
3. "I didn't ask you that" on page 15
4. "Are you deliberately not answering my questions?" again on page 15.
5. "Is there some reason you refuse to answer my questions, sir?" and "Answer my questions, sir" on pp 17-18.
6. "Drunk is not illegal. It should be but it's not" on page 23.

I also reviewed the actual DAR recording itself to be sure that the questions on pages 18 thru 23 were posed by DHS counsel, (b) (6) and not IJ (b) (6). I confirmed that this was the case except for the one gratuitous remark by the IJ that drunkenness should be illegal. The Respondent from the transcript appeared to address (b) (6) as "Your Honor" which raised

question as to whether the questioning although turned over to the (b) (6) by the IJ, did not contain interjected questions from IJ (b) (6). I verified that the Respondent was incorrectly addressing the government attorney also as "Your Honor" which I have found happens not uncommonly by uneducated, yet respectful respondents who acknowledge the education and power of government officials or do not distinguish the different roles an American judge and government attorney have.

Further, there is at least one portion of the transcript that is inaccurately transcribed and may have led the BIA to think that the IJ was mocking the respondent. This is found at page 13, line 14. It is transcribed as the IJ asking, "So you left your mommy there?" My review of the DAR record actually indicates that the IJ asked, "So you left your mother there?"

In my view, it appeared that the respondent was struggling to understand what was being asked and how to respond, rather than being deliberately evasive. He certainly did have the propensity at times answer his own questions as opposed to what was being asked. This appeared to be a tendency of his as he did the same when questioned by the DHS inspector. See for example the respondent's Declaration of Sworn Statement, page 7, lines 41 and 47; and page 8, lines 3 & 10. It did not seem to be a problem with the Mam interpretation provided (in either situation), but rather a lack of sophistication, education and unfamiliarity with legal proceedings. IJ (b) (6) appeared to ultimately recognize this in a lengthy statement (b) (6) made on page 18, lines 12-19 where (b) (6) stated "Because that's what you want to tell me and you're not listening to the questions because you have preconceived in your mind what you want to say. And that may be important. I'm not saying it's not. But I need context."

However, after apparently acknowledging this as the problem, (b) (6) left the remainder of the questioning to (b) (6) the DHS attorney. (b) (6) clearly came to the conclusion that the Respondent was not intentionally being unresponsive or obfuscating as (b) (6) stated the same clearly in (b) (6) Oral Decision which is absent of anything of questionable nature. The BIA also clearly recognized this as its decision noted that it affirmed the IJ's well stated legal findings and conclusions. Yet they were concerned with some of (b) (6) prior attitudinal questions in referring this portion of the transcript to the CIJ for review.

### III. Conclusions and Counsel given

I met and counseled IJ (b) (6) at a face to face meeting on June 20. I pointedly discussed the above concerns and the specific early questions quoted above that evidenced possible frustration and impatience. As I noted the above colloquies (b) (6) had with the respondent that included accusatory and rhetorical questions, and one gratuitous statement of drunkenness --- (b) (6) listened attentively. I cautioned (b) (6) that (b) (6) must refrain from questioning of this nature as it serves no purpose and puts (b) (6) in a bad light on review despite (b) (6) legally correct rulings and findings which itself was absent of anything of question.

(b) (6) responded that (b) (6) did not intend any disrespect, but was trying in (b) (6) questions "to get the respondent to focus" on the actual questions and issues. (b) (6) was receptive to my counsel to change (b) (6) manner of questioning to reduce any appearance of accusatory or judgmental questioning. And I noted especially that the gratuitous remark of drunkenness only evidenced (b) (6) frustration and served nothing else.

I further noted that in my view it was (b) (6) Oral Decision that clearly showed to the BIA that (b) (6) initial questions that raised their concerns cured (b) (6) questionable examination of the respondent. (b) (6) decision specifically stated that (b) (6) discounted (b) (6) early concerns that the respondent was intentionally being unresponsive. It was a well-reasoned and legally sound

decision void of any indications of prejudice or bias. (b) (6) decision --- I emphasized --- was how (b) (6) should have conducted the hearing --- without passion or personal comments.

(b) (6) stated (b) (6) took note of the reason for this referral and that it was to help (b) (6) better perform (b) (6) duties and avoid reversal or higher appellate court criticism. (b) (6) took the counsel well and stated (b) (6) would learn from it.

# Memorandum

(b) (6)



Subject	Date
<i>Matter of</i> (b) (6) (BIA June 4, 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 June 4, 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

File: A (b) (6)

Date:

JUN - 4 2013

In re: (b) (6)

IN ASYLUM AND/OR WITHHOLDING PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANT: Pro se

The applicant, a native and citizen of Guatemala, has appealed from the Immigration Judge's decision dated February 25, 2013. We review questions of law, discretion, and judgment arising in appeals from decisions of Immigration Judges de novo, whereas we review findings of fact in such appeals under a "clearly erroneous" standard. See 8 C.F.R. § 1003.1(d)(3).

Applying a de novo standard of review, we affirm the conclusion, for the reasons set forth in the Oral Decision of the Immigration Judge, that the applicant has not established his eligibility for withholding of removal under section 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3), by showing that it is more likely than not that he faces persecution in Guatemala on account of a ground protected under the Act. See *INS v. Stevic*, 467 U.S. 407, 429-30 (1984). The applicant's claim that his brother was killed in an unknown manner by unknown persons (Tr. at 19-20, 22, 24, 25) is insufficient to establish a likelihood of persecution on account of a ground protected under the Act. See (b) (6)

(b) (6)

We further affirm the Immigration Judge's denial of the applicant's application for protection under the Convention Against Torture, for he has not shown that he would more likely than not suffer torture by or with the acquiescence of a government official of Guatemala. See (b) (6) (b) (6) 8 C.F.R. §§ 1208.16-.18. The applicant does not challenge this determination on appeal.

The applicant has submitted additional evidence on appeal. We will not consider the new evidence, because the Board is an appellate body whose function is to review, not to create, a record. See *Matter of Fedorenko*, 19 I&N Dec. 57 (BIA 1984). Nor will we remand the record for a new consideration of the applicant's claim by the Immigration Judge, for the applicant has not shown that

<sup>1</sup> The applicant states on appeal that the signature on the fourth and final page of his December 21, 2009, Record of Sworn Statement is not his. We acknowledge that the signature does not appear to match the signatures on the bottom of the second and third pages of that document. However, we discern no need for a remand to the Immigration Judge, because (1) the applicant has not claimed that the signatures on the second and third pages of the document are not his; and (2) the applicant had the opportunity to express his fear of return to Guatemala before the Immigration Judge, and the Immigration Judge did not rely on the Record of Sworn Statement in denying his applications for relief.

the newly proffered evidence would likely change the result below. *See Matter of Coelho*, 20 I&N Dec. 464 (BIA 1992). In that regard, the documentary evidence is in Spanish and does not include English translations. Nor has the applicant shown that the proffered evidence was not available and could not have been discovered or presented at his merits hearing. *See* 8 C.F.R. § 1003.2(c)(1).

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

  
\_\_\_\_\_  
FOR THE BOARD

IMMIGRATION COURT

(b) (6)

In the Matter of:

Case No: A (b) (6)

(b) (6)

Applicant

IN WITHHOLDING-ONLY PROCEEDINGS

On Behalf of the Applicant

On Behalf of the DHS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Oct 30, 2012 and is issued 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.

ORDER: It is hereby ordered that the applicant's request for:

[✓] 1. Withholding of Removal under INA 241(b) (3) is:

- [ ] Granted  
[ ] Withdrawn  
[✓] Denied

[✓] 2. Withholding of Removal under the Convention Against Torture is:

- [ ] Granted  
[ ] Withdrawn  
[✓] Denied

[ ] 3. Deferral of Removal under the Convention Against Torture is granted.

Date: Feb 25 2013

(b) (6)

327-13

APPEAL: NO APPEAL

APPEAL DUE BY:

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [✓] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [✓] DHS

DATE: 2/25/13 BY: COURT STAFF

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

Q5

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

(b) (6)

File: A (b) (6)

February 25, 2013

In the Matter of

(b) (6)

APPLICANT

)  
) IN WITHHOLDING ONLY PROCEEDINGS  
)  
)

CHARGES:

APPLICATIONS:

ON BEHALF OF APPLICANT: PRO SE

ON BEHALF OF DHS: (b)(6) & (b)(7)(C)

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a male native and citizen of Guatemala. Withholding only proceedings were commenced after the respondent was referred to the Court after a reasonable fear review. In a decision on September 27, 2012, an Asylum Officer found that the respondent did not have a reasonable fear of persecution. The Court reviewed that decision on October 24, 2012, and vacated the decision and allowed the respondent to

proceed with withholding only proceedings. The finding by the Asylum Officer of no reasonable fear on referral to the Court on the Form I-863 was Exhibit 1. It contains with it, the finding of determination rather, dated September 13, 2012, and the question and answers of that interview. They are collectively Exhibits 1-A and 1-B.

Exhibit 2 is the respondent's application for asylum, Form I-589. Additionally, the respondent was provided with an interpreter in the Mam language with two-relay with a Spanish interpreter translated.

The respondent claims that he left Guatemala and went to live in Mexico and remained in Mexico for approximately 12 years beginning in 1982. Respondent claims that he left Todo Santos, Guatemala because of the civil war. Respondent claims that he lived in Mexico for 12 or 13 years and worked there, and then came to the United States in approximately 1994.

Since coming to the United States, the respondent has been removed multiple times and reentered illegally each time. The respondent was ordered deported by an Immigration Judge in 1996 and then departed the United States in approximately March of 1996. Respondent returned to the United States in either May or April of 1996. Respondent was once again taken out of the United States in approximately 2007 and remained out of the United States approximately one month before returning in April of 2007.

He then departed the United States in May of 2010 and returned to the United States approximately July of 2010. The respondent was prosecuted for his unlawful reentry and he was sentenced to 18 months imprisonment, after which, withholding only proceedings were commenced. The Court acknowledges that the respondent may have a different cultural understanding of some questions with regard to his residence and departures from Guatemala which make it difficult to have a chronological timeline of the respondent's various residences as well as an understanding of where his family is and where his siblings and children are residing at this time.

The Court cannot determine if the respondent is deliberately evasive in failing to respond to very simple and direct questions. For example, when did you leave Mexico, to come live in the United States. However, the Court will not find that he has filed a frivolous application or that he has been deliberately dishonest. The Court does find, however, that the respondent has failed to establish a clear probability of persecution on account of race, religion, nationality, or membership in a particular social group.

The respondent has also failed to establish a clear probability of torture by the government or a group acting with the acquiescence of the government. The respondent bears the burden of establishing eligibility for the relief that he seeks. After an hour and of half questioning, the Court finds that he is

competent and the Court has taken measures to make sure that he is understanding the questions including rephrasing them in a simple manner, re-asking them where there is some ambiguity or misstatement. For example, the respondent's time in Mexico residing there, whether it was two or three years or 12 or 13 years. And though the respondent gave both answers, the Court has not used that to discredit his credibility but only as an indication that the Court has given him the benefit in re-asking questions where it does appear to be either confusing or ambiguous or contradictory.

Even in the best light, the respondent's testimony has only established that in 1982, he went to live in Mexico where he remained for 12 or 13 years. He has not explained why he left Mexico and states that he only worked to survive in Mexico in Chiapas.

After coming to the United States, the respondent has been arrested multiple times including driving under the influence of alcohol and driving without a license. He has been removed from the United States multiple times including 1996, 2007, and 2010. On each of these occasions, the respondent has returned to Guatemala and visited his parents. One of his most recent trips back in 2007, the respondent claims that his mother told him that one of the respondent's brothers had been killed. The respondent says that he does not know who was responsible, whether it was guerrillas because the respondent had been

involved in patrolling or whether it was delinquency due to criminals.

As stated above, the respondent bears the burden of establishing a clear probability of persecution. The respondent states only that his mother told him that he was not safe and that he should leave Guatemala. The Court finds that the basis of his fear is not sufficient to form a clear probability of persecution and that he has also failed to establish a clear probability on account of any of the protected grounds under the statute of either race, religion, nationality, membership in a particular social group, or political opinion.

Respondent's vague assertion that he does not know how killed his brother and that it may have been because of or by guerrillas because they had been involved in patrolling though that might be a protected ground. Respondent does not have that information and is speculating that it may have been because of that but it was also speculation that it may have been due to delinquency.

Therefore, the respondent has not established the clear probability and he has not established a basis for his claim. The respondent has not asserted any claim of past persecution himself and claims only that he fled Guatemala due to the conditions of the civil war in 1982 and lived in Mexico for 12 or 13 years. Therefore, he is not entitled to any presumptions and the evidence presented is insufficient to carry his burden. In



fact, it appears that his parents have remained in Guatemala and he is unaware of the whereabouts of his remaining siblings.

With regard to protection under the Convention Against Torture, respondent does not claim that he is fearful of torture by the government or a group acting with the acquiescence of the government.

ORDERS

Therefore, protection under the Convention Against Torture is denied. The respondent is ordered removed.

Please see the next page for electronic signature

(b) (6)

Immigration Judge

//s//

Immigration Judge (b) (6)

(b) (6) on March 29, 2013 at 2:50 PM GMT

1 as of December 8, 2009, I don't have any communication regarding  
2 her.

3 Q. When did you get married, sir?

4 A. Your Honor, I do not recall exactly how long ago  
5 it was when we got married. I do have children with her.

6 Q. Did you and your wife ever live together in the  
7 United States?

8 A. Yes, Your Honor. I was living with her when I  
9 was detained in (b) (6)

10 Q. And when were you detained in (b) (6) sir?

11 A. Well, we met each other in (b) (6) when I was  
12 working.

13 Q. Do you understand the question?

14 A. Yes.

15 Q. Then answer it.

16 A. Regarding my wife. Your Honor, if you allow me  
17 to explain to you my wife, I went to (b) (6) and it was the wife I  
18 had in Guatemala and then I met up with her again in (b) (6) while  
19 I stayed with her in (b) (6)

20 Q. How many children do you have, sir?

21 A. Five.

22 Q. Is your wife the mother of all your children?

23 A. Yes.

24 Q. And what country were your children born in?

25 A. Guatemala.

1 A. Your Honor, I was deported.

2 Q. Yes, sir. You've been deported quite a few

3 times, sir. Once again, what did you do when you were there?

4 A. The first time.

5 Q. Where are your mother and father, sir?

6 A. They're in Guatemala.

7 Q. Both of them?

8 A. Yes, Your Honor. Both are living. They're not

9 exactly where I was raised. They're in another place.

10 Q. Okay, sir. Do you have sisters?

11 A. Yes, Your Honor. I have sisters and they are in

12 Guatemala. I do not know their whereabouts.

13 Q. How many sisters do you have?

14 A. I have five sisters.

15 Q. How many brothers, male brothers do you have?

16 A. There are four brothers in total. One of them,

17 Your Honor, one of them, excuse me, one of them was killed,

18 assassinated.

19 Q. Sir, the four brothers, does that include you?

20 A. I am the first one.

21 Q. I didn't ask you.

22 A. I'm sorry, Your Honor.

23 Q. How many male children did your mother have?

24 A. Five.

25 Q. Your four brothers, how many of them are still

1 living?

2 A. Three are living.

3 Q. Your five sisters, how many are living?

4 A. Your Honor, I do not have a clue as to where they  
5 live.

6 Q. I didn't ask you where they live.

7 A. I apologize.

8 Q. Do you know how many of your sisters are still  
9 alive?

10 A. Your Honor, I do not know. It is my mother who  
11 informs me every time when I get deported as to how they all  
12 are. I just know that one of them is gone.

13 Q. Now, sir, you get deported a lot. Okay. So last  
14 time you had any information was when?

15 A. Your Honor, the last time I was deported was in  
16 May of 2010.

17 Q. Yes, sir. And in May of 2010, sir, where did you  
18 go after you were deported?

19 A. Your Honor, last time I was deported, I was only  
20 there for a few days. I was there with my mother  
21 [indiscernible].

22 Q. How was your visit with your mother?

23 A. When I arrived?

24 Q. Yes. Do you speak any other languages, sir?

25 A. No, Your Honor. I only speak Mam.

1           A.    My mother, I don't know, Your Honor. I don't  
2 have a clue.

3           Q.    Well, sir, there's a lot of things you don't  
4 know. The last time you had information, how was your mother?

5           A.    Well, the last time that I saw my mother and I  
6 spoke to my mother was when I was deported in 2010 but that was  
7 a brief visit because I needed to be left home.

8           Q.    I understand, sir. How is your mom doing then?  
9 Is she feeling okay? Was she glad to see you?

10          A.    Excuse me. Your Honor, the last time I arrived,  
11 she cried terribly due to the fact that one of my brothers had  
12 been assassinated. And for that reason, I had to leave once  
13 again.

14          Q.    So you left your mommy there?

15          A.    That is it. My mother stayed and I immediately  
16 returned.

17          Q.    Okay. So where is your dad?

18          A.    He is together with my mother.

19          Q.    And how was he doing the last time you saw him,  
20 sir?

21          A.    Again, Your Honor, he was doing fine but it was  
22 that sadness of one of my brothers being assassinated. They  
23 were very sad and they told me, know what, try your best to take  
24 care of your life and protect yourself. Here, you can no longer  
25 live in peace.

1 was at another place.

2 Q. Where is that other place, sir?

3 A. The same town of de Los Santos but at a distance  
4 of two hours away.

5 Q. What's the name of the town?

6 A. It is called San Martin.

7 Q. And are your parents living in San Martin, sir?

8 A. Yes, Your Honor. That is correct. There were  
9 two other people even the fact right now, we have a lot older.

10 Q. And where were you living before you came to the  
11 United States?

12 A. Due to the problem, the war that took place in  
13 1982, I had to flee.

14 Q. I didn't ask you that.

15 A. After my brother was assassinated, my parents had  
16 to flee to another place.

17 Q. Well, sir, you keep not answering my questions.  
18 And I don't know why. It could be you don't understand. And it  
19 could be a deliberate technique to avoid my questions.

20 A. I understand, Your Honor.

21 Q. Are you deliberately not answering my questions?

22 A. The only thing I'm responding to are the  
23 questions regarding my parents.

24 Q. I didn't ask you about your parents. My last  
25 question was before you came to the United States, where did you

1 live?

2 A. Your Honor, when I left Todo Santos (phonetic  
3 sp.) .

4 A. (Spanish Interpreter) Two words, breaking up with  
5 phonetic spelling.

6 A. I had to flee and I fled to Mexico.

7 Q. Were you living in Todo Santos the last time you  
8 lived in Guatemala?

9 A. Yes, that is where I was. After that, I came to  
10 this country.

11 Q. So, sir, when is the last time you lived in Todo  
12 Santos?

13 A. The last time I was in Todo Santos is when I was  
14 beaten and I had to go. I had to flee to Mexico.

15 Q. I didn't ask you that.

16 A. Your Honor, 1992 when I fled, I went to Mexico.

17 Q. What year?

18 A. It was in 1982 when I fled.

19 Q. Before you left in 1982, were you living in Todo  
20 Santos?

21 A. Yes.

22 Q. And when you left Todo Santos in 1982, did you  
23 leave your wife and children there?

24 A. Your Honor, after I left in 1982, I had to flee  
25 with my wife and my children and we went to Chiapas (phonetic



1 sp.), Mexico.

2 Q. Sir, in 1982, did your wife and children go with  
3 you to Mexico?

4 A. That is correct.

5 Q. And how long did you stay in Mexico?

6 A. More or less, three years I was in Mexico.

7 Q. And after spending two or three years in Mexico,  
8 where did you go?

9 A. There is correction. That is 12 or 13 years.

10 Q. Sir, how long did you live in Mexico?

11 A. I was approximately there in 12 and 13 years. I  
12 was there working to survive.

13 Q. Where in Mexico did you live?

14 A. It was in Komipan Chiapas (phonetic sp.), and  
15 exactly on the border.

16 Q. And why did you leave Komipan Chiapas?

17 A. I was in Komipan Chiapas to protect my life and  
18 that of my family because I was very fearful of returning to my  
19 town due to so much tragedy and killing that occurred.

20 Q. Is there some reason you refuse to answer my  
21 questions, sir?

22 A. Your Honor, I am only responding to what I am  
23 understanding.

24 Q. Why did you leave Mexico, sir?

25 A. Well, I had to leave after getting such a deep

1 beating and being so scared.

2 Q. In Mexico, sir?

3 A. No, Your Honor. I had to suffer all of that  
4 while in Todo Santos and then I was only [indiscernible].

5 Q. Answer my question, sir.

6 A. (No audible response.)

7 Q. Do you understand my question, sir?

8 A. Yes, Your Honor.

9 Q. What is the question, sir?

10 A. I am being asked where I have been and what has  
11 happened.

12 Q. No, sir. Because that's what you want to tell me  
13 and you're not listening to the questions because you have  
14 preconceived in your mind what you want to say. And that may be  
15 important. I'm not saying it's not. But I need context. I  
16 need information to understand, the bigger circumstance. And  
17 you're not allowing or you're not understanding. So I'm not  
18 going to ask you any more questions. I'm going to allow (b) (6)  
19 (b) (6) to see if maybe he can ask questions that are clearer.

20 JUDGE TO (b) (6)

21 Q. (b) (6)

22 A. Thank you, Judge.

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

24 Q. Sir, why exactly are you fearful of returning to  
25 Guatemala at this time?

1 Q. Now, sir, going back to your criminal history,  
2 sir, you mentioned something about 2009, driving without a  
3 license. How many DUIs, driving under the influence convictions  
4 have you suffered?

5 A. Your Honor, I was detained two times for being  
6 drunk, two times for driving without a driver's license.

7 Q. Did you see a judge for these arrests?

8 A. Yes, when I was detained for being a drunk, I  
9 didn't have to see a judge and [indiscernible].

10 Q. I didn't ask you about the DUI. You said you had  
11 two DUIs and driving without a license. So my question was did  
12 you see a judge for all four of these arrests?

13 A. The only two times that I was before a judge was  
14 because of the DUI.

15 Q. Sir, how many DUI arrests have you had?

16 A. Two.

17 Q. Not five, sir?

18 A. No, Your Honor. I have been detained twice for  
19 being drunk and twice for driving without a license.

20 JUDGE TO (b) (6)

21 Q. Drunk is not illegal. It should be but it's not.  
22 Were you driving?

23 A. Your Honor, the first time I do acknowledge that  
24 I was drunk and driving. The second time I went to the store  
25 and unfortunately the brakes were bad and I crashed. And when

## Part B. Information About Your Application

(NOTE: Use Form I-589 Supplement B, or attach additional sheets of paper as needed to complete your responses to the questions contained in Part B.)

When answering the following questions about your asylum or other protection claim (withholding of removal under 241(b)(3) of the INA or withholding of removal under the Convention Against Torture), you must provide a detailed and specific account of the basis of your claim to asylum or other protection. To the best of your ability, provide specific dates, places, and descriptions about each event or action described. You must attach documents evidencing the general conditions in the country from which you are seeking asylum or other protection and the specific facts on which you are relying to support your claim. If this documentation is unavailable or you are not providing this documentation with your application, explain why in your responses to the following questions.

Refer to Instructions, Part I: Filing Instructions, Section II, "Basis of Eligibility," Parts A - D, Section V, "Completing the Form," Part B, and Section VII, "Additional Evidence That You Should Submit," for more information on completing this section of the form.

1. Why are you applying for asylum or withholding of removal under section 241(b)(3) of the INA, or for withholding of removal under the Convention Against Torture? Check the appropriate box(es) below and then provide detailed answers to questions A and B below:

I am seeking asylum or withholding of removal based on:

- |                                      |   |
|--------------------------------------|---|
| <input type="checkbox"/> Race        | <input type="checkbox"/> Political opinion                                  |
| <input type="checkbox"/> Religion    | <input checked="" type="checkbox"/> Membership in a particular social group |
| <input type="checkbox"/> Nationality | <input checked="" type="checkbox"/> Torture Convention                      |

- A. Have you, your family, or close friends or colleagues ever experienced harm or mistreatment or threats in the past by anyone?

☐ No ☒ Yes

If "Yes," explain in detail:

1. What happened;
2. When the harm or mistreatment or threats occurred;
3. Who caused the harm or mistreatment or threats; and
4. Why you believe the harm or mistreatment or threats occurred.

I WAS BEATEN BY MEMBERS OF THE GUATEMALA'S ARMY ALONE WITH MEMBERS OF MY HOMETOWN IN MARCH OF 1982. DUE TO THE FACT THAT, THEY BELIEVED THAT WE WERE HELPING THE GUATEMALAN GUERRILLA, AND VICEVERSA THE GUATEMALAN GUERRILLA BELIEVED WE WERE HELPING THE ARMY

- B. Do you fear harm or mistreatment if you return to your home country?

☐ No ☒ Yes

If "Yes," explain in detail:

1. What harm or mistreatment you fear;
2. Who you believe would harm or mistreat you; and
3. Why you believe you would or could be harmed or mistreated.

I FEAR TO BE RETURNED TO MY COUNTRY, BECAUSE MY OLDEST BROTHER (b) (6) WAS ASSESINATED, WHEN HE RETURNED TO MY HOMETOWN IN 2007. ALSO SEVERAL MEMBERS WERE ASSESINATED TOO BY MEMBERS OF THE GUATEMALAN GUERRILLA. BECAUSE THEY BELIEVE THAT MY COMUNIDAD HELPED THE GUATEMALAN ARMY,

**Part B. Information About Your Application (Continued)**

2. Have you or your family members ever been accused, charged, arrested, detained, interrogated, convicted and sentenced, or imprisoned in any country other than the United States?

☒ No ☐ Yes

If "Yes," explain the circumstances and reasons for the action.

- 3.A. Have you or your family members ever belonged to or been associated with any organizations or groups in your home country, such as, but not limited to, a political party, student group, labor union, religious organization, military or paramilitary group, civil patrol, guerrilla organization, ethnic group, human rights group, or the press or media?

☒ No ☐ Yes

If "Yes," describe for each person the level of participation, any leadership or other positions held, and the length of time you or your family members were involved in each organization or activity.

- B. Do you or your family members continue to participate in any way in these organizations or groups?

☒ No ☐ Yes

If "Yes," describe for each person your or your family members' current level of participation, any leadership or other positions currently held, and the length of time you or your family members have been involved in each organization or group.

4. Are you afraid of being subjected to torture in your home country or any other country to which you may be returned?

☐ No ☒ Yes

If "Yes," explain why you are afraid and describe the nature of torture you fear, by whom, and why it would be inflicted.

I FEAR TO BE RETURNED TO MY NATIVE COUNTRY GUATEMALA, BECAUSE MY FATHER AND MOTHER MOVED OUT OF MY HOME TOWN, DUE TO THE FACT THAT MY OLDEST (b) (6) WAS KILLED BY GUERRILLA MEMBERS IN REVENGE. BECAUSE THEY BELIEVE THAT, WE HELPED THE GUATEMALAN ARMY. MY MOTHER IS SUFFERING, BECAUSE SHE THINKS THAT, I WILL BE KILL LIKE MY BROTHER (b) (6)

**Part C. Additional Information (Family Application)**

(NOTE: Use Form I-589 Supplement B, or attach additional sheets of paper as needed to complete your responses to the questions contained in Part C.)

1. Have you, your spouse, your child(ren), your parents or your siblings ever applied to the U.S. Government for refugee status, asylum, or withholding of removal?

☐ No

☒ Yes

If "Yes," explain the decision and what happened to any status you, your spouse, your child(ren), your parents, or your siblings received as a result of that decision. Indicate whether or not you were included in a parent or spouse's application. If so, include your parent or spouse's A-number in your response. If you have been denied asylum by an immigration judge or the Board of Immigration Appeals, describe any change(s) in conditions in your country or your own personal circumstances since the date of the denial that may affect your eligibility for asylum.

2. A. After leaving the country from which you are claiming asylum, did you or your spouse or child(ren) who are now in the United States travel through or reside in any other country before entering the United States?

☐ No

☒ Yes

- B. Have you, your spouse, your child(ren), or other family members, such as your parents or siblings, ever applied for or received any lawful status in any country other than the one from which you are now claiming asylum?

☒ No

☐ Yes

If "Yes" to either or both questions (2A and/or 2B), provide for each person the following: the name of each country and the length of stay, the person's status while there, the reasons for leaving, whether or not the person is entitled to return for lawful residence purposes, and whether the person applied for refugee status or for asylum while there, and if not, why he or she did not do so.

YES I RESIDED IN MEXICO FOR SEVERAL YEARS ILLEGALLY TO AVOID HARM AND PERSECUTION TO BE ABLE TO TRAVEL TO THE U.S. AND BRING MY FAMILY WITH ME. THEN I MOVED TO THE U.S. AND MY FAMILY FOLLOWED ME. THE TIME THAT ~~MY~~ I SPENT IN MEXICO, WAS JUST TO TRAVEL TO THE U.S.

3. Have you, your spouse or your child(ren) ever ordered, incited, assisted or otherwise participated in causing harm or suffering to any person because of his or her race, religion, nationality, membership in a particular social group or belief in a particular political opinion?

☒ No

☐ Yes

If "Yes," describe in detail each such incident and your own, your spouse's, or your child(ren)'s involvement.



Part C: Additional Information (Continued)

4. After you left the country where you were harmed or fear harm, did you return to that country?

☐ No ☒ Yes

If "Yes," describe in detail the circumstances of your visit(s) (for example, the date(s) of the trip(s), the purpose(s) of the trip(s), and the length of time you remained in that country for the visit(s).)

I RETURNED TO MY COUNTRY, BECAUSE I HAVE BEEN DEPORTED SEVERAL TIMES. BUT WHEN I WAS RETURNED, I STAYED FOR FEW DAYS HIDING AND I RETURNED AS SOON AS I COULD, TO AVOID HARM AND PERSECUTION OR THE POSSIBILITY TO GET KILL. I LEFT MY HOMETOWN 30 YEARS AGO, THAT IS WHY I AM TRYING TO STAY IN THE U.S. A GREAT AND CIVILIZED AND SAFE COUNTRY.

5. Are you filing this application more than 1 year after your last arrival in the United States?

☐ No ☒ Yes

If "Yes," explain why you did not file within the first year after you arrived. You must be prepared to explain at your interview or hearing why you did not file your asylum application within the first year after you arrived. For guidance in answering this question, see Instructions, Part 1: Filing Instructions, Section V. "Completing the Form," Part C.

I AM FILING THIS APPLICATION MORE THAN 1 YEAR AFTER MY LAST ARRIVAL, BECAUSE I WAS UNAWARE OF THIS RULE OR RELIEF. BECAUSE, AS YOU ALREADY KNOW, I DON'T HAVE ANY EDUCATION AND I DON'T SPEAK SPANISH. ALSO I DON'T EVEN SPEAK ENGLISH! SO IS BASICALLY, BECAUSE MY LOW LEVEL OF EDUCATION.

6. Have you or any member of your family included in the application ever committed any crime and/or been arrested, charged, convicted, or sentenced for any crimes in the United States?

☐ No ☒ Yes

If "Yes," for each instance, specify in your response: what occurred and the circumstances, dates, length of sentence received, location, the duration of the detention or imprisonment, reason(s) for the detention or conviction, any formal charges that were lodged against you or your relatives included in your application, and the reason(s) for release. Attach documents referring to these incidents, if they are available, or an explanation of why documents are not available.

I WAS CONVICTED IN THE STATE OF (b) (6) WITH TWO D.U.I., I COMMITTED THE FIRST D.U.I. IN 2004 AND I WAS SENTENCED 20 DAYS JAIL AND PROBATION. AFTER THE FIRST D.U.I., RIGHT BEFORE I FINISHED I GOT THE SECOND D.U.I. AND I GOT 3 MONTHS OF JAIL TIME. I PAID OFF EVERY FEE INVOLVED IN MY TWO D.U.I. AND COMPLETED MY PROBATION SUCCESSFULLY.

**UNITED STATES DEPARTMENT OF HOMELAND SECURITY**  
**U.S. CITIZENSHIP & IMMIGRATION SERVICES**

**Declaration of Sworn Statement**

**Reasonable Fear Questions and Answers**

A File Number: A (b) (6)  
Applicant: (b) (6)  
Date of birth: (b) (6)  
Nationality: Guatemala  
Location of Applicant: (b) (6)  
Was Attorney Present During Interview? Yes ☒ No ☐  
Asylum Officer: ZLA038  
Reviewing Officer: (b) (6)  
Location of Interview: (b) (6)  
Asylum Office: (b) (6)  
Interview Date: 05/01/12

Interpreter service: LIONBRIDGE 2213028  
Language Used: Mam

Start time: 0911 End Time: 1246

**INTERPRETER'S OATH**

**CONFIDENTIALITY**

Do you affirm that you will truthfully, literally and fully interpret the questions asked by the asylum officer and the answers given by the applicant; that you will not add to, delete from, comment on, or otherwise change the matter to be interpreted; and that you will immediately notify the officer in this case if you become aware of your inability to interpret in a neutral manner on account of a bias against the applicant or the applicant's race, religion, nationality, membership in a particular social group, or political opinion?

Interpreter sworn in.

Q. Before we begin, I need to place you under oath. Will you please raise your right hand? Do you swear or affirm that all the statements you are about to make will be the truth, the whole truth, and nothing but the truth?

R. Yes.

**BACKGROUND:**

My name is (b) (6) I am an asylum officer with the United States government. I am authorized by law to administer oaths and take testimony in connection with

Initials

(b) (6)

(Rev 3/22/99)



1 enforcement of the Immigration and Nationality laws of the United States. I am here to  
2 take your sworn statement regarding your request for protection from removal to  
3 Guatemala.

4  
5 The purpose of this interview is to determine whether you should be referred to  
6 an immigration judge to apply for withholding or deferral of removal. You will be  
7 eligible for such a referral if the INS finds that there is a reasonable possibility  
8 you would be persecuted or tortured in the country to which you have been  
9 ordered removed. I am going to ask you questions about why you fear returning  
10 to the country to which you have been ordered removed, or any other country. It  
11 is very important that you tell the truth during the interview and that you respond  
12 to all of my questions. This may be your only opportunity to give such  
13 information. Please feel comfortable telling me why you fear harm. U.S. law has  
14 strict rules to prevent the disclosure of what you tell me today about the reasons  
15 you fear harm. The information you tell me about the reasons for your fear will  
16 not be disclosed to your government, except in exceptional circumstances. The  
17 statements you make today may be used in deciding your claim and in any future  
18 immigration proceedings. It is important that we understand each other. If at any  
19 time I make a statement you do not understand, please stop me and tell me you  
20 do not understand so that I can explain it to you. If at any time you tell me  
21 something I do not understand, I will ask you to explain.

22  
23 Q. Do you have any questions about what I have explained to you?

24 R. Yes, my question if I can have protection here because I ran away from my town I  
25 got harmed by people and they sent me to the hospital. People picked me up from  
26 the ground because when I got harmed they left me on the ground.

27  
28 Q. Okay, do you have any questions about the process?

29 R. Yes, I have a question, I understood I don't want to go back to Guatemala because I  
30 have a fear Can you help me?

31  
32 Q. Okay, but do you understand the interview and the process that we are going through  
33 today? Do you understand what will happen today and what you need to do during the  
34 interview?

35 R. Okay, I understand now.

36  
37 Q. Are you comfortable with the interpreter so far?

38 R. Yes, I understand.

39  
40 Q. Are you willing to answer my questions at this time?

41 R. Yes.

42  
43 Q. Do you understand that your attorney is participating in this interview by telephone?

44 R. Yes, I understand.

45  
46 Q. Are you being treated well at the detention center?

47 R. Not any problems. I am okay here.

1 Q. Do you have any medical or health issues I should be aware of?  
2 R. Well, I am a little sick, but not much. I have a little pain but when I get pain I drink  
3 water and it stops.  
4  
5 Q. Are you taking any medications?  
6 R. No.  
7  
8 Q. Where is the pain that you are experiencing?  
9 R. In my right side.  
10  
11 Q. Have you notified the medical unit about your pain?  
12 R. No, I didn't report this pain. But my tooth I did tell them about it.  
13  
14 Q. You need notify to notify the medical unit of any health problems. We spoke about  
15 this the last time you were here. Do you understand this?  
16 R. Yes, okay.  
17  
18 Q. Do you have any injuries that are causing this pain in your side?  
19 R. I had a surgery.  
20  
21 Q. What was the surgery for?  
22 R. Because I got a hernia.  
23  
24 Q. How did you get the hernia?  
25 R. I don't know why. But when I came to (b) (6) they caught me, and sent me to the  
26 hospital.  
27  
28 Q. How did they figure out you had a hernia?  
29 R. They checked me, when they saw it was swollen that is when they took me to the  
30 hospital.  
31  
32 Q. Did you injure yourself before or after you left Guatemala?  
33 R. No, this hernia just appeared by itself. There it was little pain but when I walked it  
34 became worse.  
35  
36 Q. Did the injury occur before or after you left Guatemala?  
37 R. It appears there but it got worse after I left.  
38  
39 Q. Did it happen before or after you left your country?  
40 R. Yes, that is what I said, it happened before but it got worse when I started walking.  
41  
42 Q. Do you know how you got this hernia in Guatemala?  
43 R. I did not but the doctors in (b) (6) told me it was a hernia.  
44  
45 Q. Did you do anything or did anything happen to you to cause the pain you experienced  
46 when you were in Guatemala?  
47 R. When I was in (b) (6) they deported in May and I came in July. I did not do

1 anything I just felt a little bit of pain. When I came to (b) (6) they checked me and that  
2 is when I knew it was a hernia.

3  
4 Q. Have you taken any medication in the last 48 hours?

5 R. Yes, before I got some tablets from the doctor...I have them for the last month. No,  
6 I only drank the tablets in (b) (6)

7  
8 **Identification of Applicant/Citizenship & Nationality**

9  
10 Q. What is your true and complete name?

11 R. (b) (6) is my name.

12  
13 Q. Have you ever used any other names or aliases?

14 R. No.

15  
16 Q. What is your correct date of birth?

17 R. (b) (6)

18  
19 Q. Have you ever used a different date of birth?

20 R. No.

21  
22 Q. Where were you born?

23 R. Guatemala

24  
25 Q. Of what country are you a citizen?

26 R. Guatemala

27  
28 Q. Are you a citizen of any other country?

29 R. No, I am from Guatemala the department of Huehuetenango.

30  
31 Q. Have you ever lived in any other country apart from Guatemala and the US?

32 R. No.

33  
34 Q. What was your last address in your country?

35 R. Todos Santos, Huehuetenango, Guatemala.

36  
37 Q. Have you ever apply for asylum in the United States?

38 R. No, I did not apply I started working because I did not know about it.

39  
40 Q. Have you applied for asylum in any other country?

41 R. No.

42  
43 Q. What is your marital status (single, married, divorced, or widowed)?

44 R. I am married.

45  
46 Q. What is your wife's complete name?

47 R. (b) (6)

1 Q What country is she a citizen of?  
2 R. The same place where I am from.  
3  
4 Q. Is she Guatemalan?  
5 R. Yes.  
6  
7 Q Where is she currently living?  
8 R. Lucia she is living in the same place... Todo Santos it is part of Huehuetenango.  
9  
10 Q. Do you have any children?  
11 R. Yes, I have 5.  
12  
13 Q. What is your religion?  
14 R. It is Christian.  
15  
16 Q What is your race or ethnicity?  
17 R. I am indigenous I have traditional clothes...my wife makes the clothes.  
18  
19 Q. Are you Mam?  
20 R. Yes.  
21  
22 **ENTRY INTO THE U.S.**  
23  
24 Q. What was the date you first entered into the U.S.?  
25 R. 1994.  
26  
27 Q. What month did you enter in 1994?  
28 R. July 15<sup>th</sup>.  
29  
30 Q. How many times since that date have you returned to your country?  
31 R. I returned 3 times.  
32  
33 Q. When was the first time you returned?  
34 R. They deported me in 1996 in March.  
35  
36 Q. How long did you remain in Guatemala after this deportation in March of 1996?  
37 R. I just went there for one week and returned again.  
38  
39 Q. When was the second time you returned to Guatemala?  
40 R. I went back in about 2007.  
41  
42 Q. What month?  
43 R. I don't remember if it was February or March.  
44  
45 Q Why did you return to Guatemala in February or March of 2007?  
46 R. Well, because I went to work and the police were called and the police called  
47 immigration.

1 Q Were you deported in 2007?  
2 R Yes  
3  
4 Q. How long did you stay in Guatemala after your deportation in 2007?  
5 R. The same when I went home I stayed for 1 week.  
6  
7 Q. When was the last time you returned to Guatemala?  
8 R. The other time was in December 8, 2009.  
9  
10 Q. Was this also a deportation?  
11 R. When they caught me...I stayed there for four months and then they deported  
12 me.. in May 25, 2010.  
13  
14 Q. How long did you remain in Guatemala after this deportation?  
15 R. The same...I went there...I did not stay at home I was walking around there...and  
16 they caught me in July.  
17  
18 Q. Who caught you in July?  
19 R. When I returned...I was deported on May 25, 2010...I returned for some time...then  
20 I was traveling for a month. They caught me in July... I did not understand the  
21 question...  
22  
23 Q. Okay, how long did you stay in Guatemala after your last deportation?  
24 R. I stayed one week...I went back in May and I came back in July.  
25  
26 Q. What was the date you left Guatemala after you were deported on May 25, 2010?  
27 R. June 20<sup>th</sup>.  
28  
29 Q. Okay, that means you stayed in Guatemala for one month, why are you saying that  
30 you stayed in 1 week?  
31 R. I stayed only 1 week. I stayed with my mother for a week.  
32  
33 Q. Okay, but you stated that you left Guatemala on June 20<sup>th</sup> which is a month after you  
34 were deported?  
35 R. No, I stayed for 1 week with my mother then I was traveling around.  
36  
37 Q. Where does your mother live?  
38 R. My mother is living in the same part of Todos Santos...not in the town it is beside  
39 Todo Santos...she ran from her house because it is in danger..she is sad.  
40  
41 Q. Was she living in Guatemala?  
42 R. Yes.  
43  
44 Q. What was the date you left Guatemala the last time?  
45 R. I left Guatemala in the 8<sup>th</sup> of June...but I traveled for a month..that is why when they  
46 caught me it was July 25<sup>th</sup>.  
47

1 Q. Previously you said that you left Guatemala on June 20<sup>th</sup> now you are saying June  
2 8<sup>th</sup>. Why is this different?

3 R. I said in June 20<sup>th</sup>...it was almost the end of the month...I was traveling for a  
4 month.. the they caught me on July 25<sup>th</sup>.

6 Q. What was the date you crossed into Mexico from your country?

7 R. I don't remember the date but I think it was 20 or 22 of June.

9 **REASONS FOR COMING TO US & SUBSTANCE OF THE CLAIM**

11 Q. When you came here in 1994, why did you leave your country?

12 R. Yes, when I left my country and entered here in July 15<sup>th</sup> 1994...I ran away in 1992,  
13 because the guerrillas came to my town and the soldiers came to my town and they beat  
14 me .I run away from them.

16 Q. What year were you beaten by the soldiers?

17 R. 1982

19 Q. Were you beaten by the soldiers in any other year?

20 R. No, but they beat me in 1982 and left my home.

22 Q. Were you beaten in 1982 or 1992 or both?

23 R. 1982.

25 Q. Were you ever beaten in 1992?

26 R. No, that time my wife said they were looking for me in 1992. That is why I left again.

28 Q. Why did the soldiers beat you?

29 R. When the guerrillas came there..they came and organized a patrol. And then I came  
30 late to patrol that is why the soldier beat me.

32 Q. Who organized the patrol?

33 R. the law organized the patrol and we patrolled 5 to 5 every day.

35 Q. Are you saying the soldiers organized the patrols?

36 R. Yes, the law allows them to do this.

38 Q. When the soldiers were beating you, did the soldiers say anything to you?

39 R. Well, the civil patrols that is who beat me because I came late for my turn.

41 Q. Did you understand the question I just asked you?

42 R. Yes,

44 Q. What was the question I just asked you?

45 R. The question was who beat you?...the civil patrol is who beat me.

47 Q. That was not the question I asked you. Did you hear the question?

1 R. The question was why I am here?  
2  
3 Q. Are you able to understand my interpreter?  
4 R. Yes.  
5  
6 Q. Okay, my question is did the soldiers say anything to you when they were beating  
7 you?  
8 R. The other patrols beat me because I did not come on time for my turn.  
9  
10 [Applicant instructed by AO and attorney to listen to the question and specifically  
11 address the question]  
12  
13 Q. Did the soldiers say anything to you when they beat you?  
14 R. Yes, they were angry not only at me...but at a lot of people. They told me that I was  
15 a guerrilla.  
16  
17 Q. Did they say anything else?  
18 R. They said that I should obey to time for patrol.  
19  
20 Q. Did the soldiers do anything else to you other than beat you?  
21 R. No, they beat me and they said that I was helping the guerrillas giving them  
22 food...collaborating with the guerrillas.  
23  
24 Q. After they accused you of supporting the guerrillas, did the soldiers do anything else  
25 to you?  
26 R. No.  
27  
28 Q. Did you continue to participate in the civil patrols?  
29 R. Yes.  
30  
31 Q. Did you have any other problems with the soldiers before you left Guatemala?  
32 R. Well I was threatened by the guerrillas and the soldiers that is why I left my home.  
33  
34 Q. When were you threatened by the soldiers?  
35 R. I believe the guerrillas threatened me when I left home and they were looking for me  
36 until they killed one of my siblings.  
37  
38 Q. Okay, but the question was when were you threatened by the soldiers?  
39 R. The soldiers came in 1982 and threatened me...but now the guerrillas are still doing  
40 that.  
41  
42 Q. When was your sibling killed?  
43 R. I think they killed in 2001 or 2002...maybe it was in 2001 because I was in Florida  
44 when I heard that they killed him.  
45  
46 Q. What was your sibling's name?  
47 R. (b) (6)

1 Q. Who killed him?  
2 R. I think the same people who were looking for me...when I was in (b) (6) I heard that  
3 they killed him...my younger brother...he went to work in Mexico but when he went back  
4 they killed him  
5  
6 Q. But you didn't answer the question. Specifically who killed your brother?  
7 R. Well as I said the same people who were looking for me...I think it was the  
8 guerrillas. It is still there in Guatemala.  
9  
10 Q. Who told you about your brother?  
11 R. My mother.  
12  
13 Q. Did she see who killed your brother?  
14 R. No, when I heard from (b) (6) ...I went there...my mother was crying...she did not  
15 explain to me who killed my brother...but she said that she thinks the same people who  
16 were looking for you. I ran away from my house.  
17  
18 Q. Why were the guerrillas looking for you?  
19 R. I don't know why they do this..I don't know...maybe when I was patrolling..patrolling  
20 against them...maybe they are still angry.  
21  
22 Q. When was the last time the guerrillas threatened you?  
23 R. In February or March of 1982.  
24  
25 Q. Did anything happen to you in 1992, 1993 or 1994 in Guatemala?  
26 R. No.  
27  
28 Q. So why did you leave Guatemala in 1994?  
29 R. In 1982, they beat me...that is the year I left my home.  
30  
31 Q. Where did you go after you left your home in 1982?  
32 R. I came close to border...to the State of Chiapas.  
33  
34 Q. Where you living in Mexico or Guatemala?  
35 R. Mexico.  
36  
37 Q. When did you start living in Mexico?  
38 R. I left my country in 1982...and then I stayed in Mexico 8 to 10 years then I came to  
39 the US in 1994.  
40  
41 Q. Earlier I asked you if you lived in any country apart from Mexico and the US and you  
42 said no. Why is this different from what you are telling me now?  
43 R. Oh forgive me. I forgot about it until now when you were asking me ...I remembered  
44 that I left my country and lived in Mexico.  
45  
46  
47  
48



1 Q Did anything happen to you in Guatemala after you were deported there March of  
2 1996?  
3 R. When I came there in 1997, my wife was not there...they beat her. I did not find her  
4 at home.  
5  
6 Q. Who beat your wife?  
7 R. I think the same people who were looking for me.  
8  
9 Q. How do you know it was the same people who were threatening you before?  
10 R. Because when they came there they asked for me...my wife did not tell them where I  
11 was.  
12  
13 Q. When did this happen?  
14 R. In 1995.  
15  
16 Q. Why were the guerrillas looking for you in 1995?  
17 R. because they followed the same...I think they got angry because I was in the patrols.  
18  
19 Q. Did you have any contact with the guerrillas while you were patrolling?  
20 R. No, but they got angry because we were patrolling against them.  
21  
22 Q. Where is your wife now?  
23 R. I her in left in (b) (6) when they caught me...till this time I don't know if she is still  
24 there.  
25  
26 Q. Did anything happen to you specifically when you went back in March of 1996?  
27 R. No, because I don't stay for there for a long time. I just stayed for a few days and  
28 then came back again.  
29  
30 Q. Did anything happen to you after you went back to Guatemala in 2007?  
31 R. No, nothing happened to me...but I found my mother upset because they killed my  
32 sibling then I ran away too.  
33  
34 Q. Did you have any problems when you went back to Guatemala in 2009?  
35 R. No, when I came there in 2009...but I heard people were driving cars and kidnapping  
36 people and decapitated people there.  
37  
38 Q. Did you have any other problems in Guatemala?  
39 R. No, because I am afraid that is why I cannot stay there at home.  
40  
41 Q. Do you still have family in Guatemala?  
42 R. Yes, I have them there but I don't know what place they are.  
43  
44 Q. Who is still living in Guatemala?  
45 R. I have 8 family members still in Guatemala...my siblings...but I don't know where  
46 they are.  
47  
48 Q. Were any of your other brothers or sisters in the civil patrols?

1 R. No, because there no patrol there now.  
2  
3 Q During the war, did were any other siblings in the civil patrols?  
4 R Yes, me and my younger brother who was killed.  
5  
6 Q. The other brothers and sisters, are they older or younger?  
7 R. I am the oldest.  
8  
9 Q. Did you have any problems in your country because you are Mam?  
10 R. I don't know.  
11  
12 Q Do you think you could be harmed in your country because of your religion?  
13 R Yes, sometimes people don't know me...I have been out of my country for 16 years.  
14  
15 Q. What does this have to do with your religion?  
16 R. The people changed their minds they are bad people.  
17  
18 Q. I don't understand, what does this have to do with you religion?  
19 R. Well, because before the people were united...but now they are divided...they don't  
20 know me . I left my country 16 years ago..they don't know me.  
21  
22 Q. Okay, but please answer the question. You said that you would have problems  
23 because of your religion. What problems do you think you could have because of your  
24 religion?  
25 R. Oh, now I understand the question. Because of my religion..No I don't think I would  
26 have problems. .but because I was patrolling that is why the people hate us.  
27  
28 Q. Apart from what you have already told me, is there any other reason that you fear  
29 returning to your country?  
30 R. Well I am afraid I left my home town...since 1982 they don't know me...and they will  
31 harm me.  
32  
33 Q. Okay, is there any other reason you fear returning to Guatemala?  
34 R. They are following the same as before, I heard from my people they kill few people  
35 there recently..  
36  
37 Q. Who killed some people?  
38 R. The same people that I said. .that they driving strange cars, they kidnap people and  
39 decapitate people.  
40  
41 Q. Is there any other reason that you have not already told me?  
42 R. I don't have anything to say. I am afraid because I left my country years ago.  
43  
44 **CONVENTION AGAINST TORTURE:**  
45  
46 Q. Are you afraid of the government of Guatemala?  
47 R. I don't know right now ..I am not going back to my country because I left my

1 country.  
2  
3 Q. Are you afraid of the government of Guatemala?  
4 R. Yes, they have their own laws.. maybe they cannot protect me.  
5  
6 Q: Do you think the government of your country could cause you severe harm or torture  
7 you if you returned to your country?  
8 R. Yes, I believe they could harm me because they harmed me before I have a scar on  
9 my head.  
10  
11 Q. Why would the government harm you now if you returned to your country?  
12 R. Because I ran away from them many years ago.  
13  
14 Q. What would the government do to you if you returned to your country?  
15 R. Maybe they are going to kill me.  
16  
17 Q. Did you have any problems with the government during any your three return trips  
18 back to Guatemala?  
19 R. No.  
20  
21 Q. When you were deported to Guatemala, did you speak to any government officials  
22 when you arrived in your country?  
23 R. Yes, when I arrived there I spoke to immigration in Guatemala. They asked where I  
24 lived and sent me there.  
25  
26 **BARS**  
27  
28 Q. Can you relocate and live safely in different part of your country?  
29 R. The entire place they do the same. I cannot find any safe place. Maybe they will kill  
30 me.  
31  
32 Q. How would the guerrillas find you in another part of your country?  
33 R. Well, the guerrillas stopped a little bit...but the others who are kidnapping the people  
34 maybe they could find me.  
35  
36 Q: Have you ever been arrested in any country, including Guatemala and the US?  
37 R. I don't understand the question.  
38  
39 Q. Have you ever been arrested?  
40 R. Not in Guatemala...no when I came home I just stayed for a few days and the I left.  
41  
42 Q. Have you been arrested in the US?  
43 R. Yes, once when I was driving a car...I was drunk driving.  
44  
45 Q. How many times have you been arrested in the US?  
46 R. two times they caught me driving drunk and two time they caught driving without a  
47 license.

1 Q. Any other arrests?  
2 R. That is it.  
3  
4 Q. Have you ever committed any othe crimes in the United States, or in any other  
5 country?  
6 R. No  
7  
8 Q. Have you ever been a terrorist or associated with or assisted any terrorist  
9 organizations?  
10 R. No.  
11  
12 Q. Have you ever harmed, hurt, injured or killed anyone or helped or ordered anyone to  
13 do any of these things?  
14 R. No  
15  
16 Q. When you were in the civil patrols, did you ever harm, hurt injure or kill a guerrilla?  
17 R. No.  
18  
19 Q. What were your duties in the civil patrol?  
20 R. We were only watching the people...searching people for guerrillas.  
21  
22 Q. Where you watching people who were suspected of being guerrillas?  
23 R. No, we only looking for guerrillas walking on the road.  
24  
25 Q. Did you ever find a guerrilla walking on the road?  
26 R. Yes, we found them but we did not annoy them because we only had a piece a wood.  
27 We just ran away from them...because we did not have anything to defend ourselves.  
28  
29 Q. Did you tell the soldiers that you saw these guerrillas?  
30 R. Yes. we told the commanders.  
31  
32 Q. What did the commanders do when you told them this?  
33 R. We told the commanders and the commanders ordered the soldiers to search for  
34 them.  
35  
36 Q. Did the soldiers find the guerrillas?  
37 R. I don't know if they found them...they were outside of Todo Santos.  
38  
39 Q. When was the last time you participated in the civil patrol?  
40 R. When I ran away...in 1982....when I went to Mexico.  
41  
42 Q. Did you have any legal status in Mexico?  
43 R. No, I tried to ask but I was afraid.  
44  
45 Q. When you were beaten by the soldiers in 1982, what did they beat you with?  
46 R. They beat me with the stick I have a scar next to my chin.  
47

1 Q. What were your specific injuries?  
2 R. they cut my chin and my head I have two scars.  
3  
4 Q. Any other injuries?  
5 R. that is it..only my head and mouth.  
6  
7 Q. Did you require medical attention for these injuries?  
8 R. The people picked me up and sent me to the hospital.  
9  
10 Q. How long were you at the hospital?  
11 R. I don't remember maybe 4 days or 1 week.  
12  
13

14 **CONCLUSION**

15  
16 Q. Did you have any problems understanding the interpreter during this interview?  
17 R. Sometimes I could not understand the question...but it is okay.  
18  
19 Q. Apart from what you have already told me, is there any other information we did not  
20 discuss?  
21 R. No just that I am afraid.  
22

23 (Attorney left interview before conclusion)  
24  
25

26  
27 **INTERVIEW ENDED:** Date: May 1, 2012 at (b) (6)  
28

29 I have read (or have had read to me) the foregoing statement consisting of - 14 -  
30 pages. I state that the answers made therein by me are true and correct to the best of  
31 my knowledge and belief and that this statement is a full, true, and correct record of my  
32 interrogation on the date indicated by the above-named officer of the Immigration and  
33 Naturalization Service. I have initialed each page of this statement and any  
34 correction(s)

35 X (b) (6) (b) (6)  
36 (Signature of Applicant) Date: May 1, 2012  
37  
38

39  
40 Subscribed and Sworn before me at (b) (6) on May 1, 2012.  
41

42   
43 (Signature of Interviewing Officer) Date: May 1, 2012  
44

45   
46 (Witness) Date:  
47  
48