



Detail

Complaint Number: 775

Immigration Judge: (b)(6)

Complaint Received Date: 06/17/13

Current ACIJ
Fong, Thomas Y. K.

Base City
(b) (6)

Status
CLOSED

Final Action
Complaint dismissed as merits-
related

Final Action Date
07/02/13

Past ACIS:

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

Complaint Narrative: R's counsel seeks the ACIJ to "overrule" or "intervene" with the IJ's decision to consolidate a wife's case with her husband's case. He also believes it is gender discrimination to join a wife's case with a husband's case as opposed to vice versa.

Complaint History

06/18/13 ACIJ Discussed the case with the IJ
07/01/13 Database entry created
07/02/13 Complaint dismissed as merits-related

Moutinho, Deborah (EOIR)

From: Fong, Thomas (EOIR)
Sent: Thursday, July 18, 2013 4:53 PM
To: Keller, Mary Beth (EOIR); Moutinho, Deborah (EOIR)
Cc: Fong, Thomas (EOIR)
Subject: RE: IJ Complaint - (b) (6) (IJ (b) (6))
Attachments: Complaint (b) (6) Atty (b) (6) doc

Mary Beth and Deborah,

Attached is the updated and completed review of this "complaint" although again I note the attorney stated he did not intend it to be a "complaint". Regardless, I found the allegations of due process violation disproven. See the attachment and the accompanying memo to file and response letter to the attorney also contained.

Thomas Y.K. Fong
Assistant Chief Immigration Judge
Immigration Court/EOIR/DOJ
606 South Olive Street, 15th Floor
Los Angeles, CA 90014
(213)894-2811
thomas.fong@usdoj.gov

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

From: Fong, Thomas (EOIR)
Sent: Wednesday, June 26, 2013 2:12 PM
To: Keller, Mary Beth (EOIR); Moutinho, Deborah (EOIR)
Subject: IJ Complaint - (b) (6)

ACIJ Keller,

Attached is a completed (but not yet finalized) IJ Complaint Intake form for the above two matters. They are wife and husband, respectively represented by atty (b) (6). You will note in the form that he represents both respondents and wrote a letter to me seeking me to "overrule" IJ (b) (6) order to consolidate the female R's case before (b) (6) with the male R's case before IJ (b) (6). I should note that when contacted he was emphatic in stating that he did not intend the letter to be a "complaint" against IJ (b) (6). The matter has not yet been resolved and the report notes its present status. I will update upon asap.

Thomas Y.K. Fong
Assistant Chief Immigration Judge
Immigration Court/EOIR/DOJ
606 South Olive Street, 15th Floor
Los Angeles, CA 90014
(213)894-2811
thomas.fong@usdoj.gov

Immigration Judge Complaint Intake Form

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

Date Received at OCIJ: _____

complaint source type	
<input type="checkbox"/> anonymous <input checked="" type="checkbox"/> respondent's attorney <input type="checkbox"/> third party (e.g., relative, uninterested attorney, courtroom observer, etc.) <input type="checkbox"/> other: _____	<input type="checkbox"/> BIA <input type="checkbox"/> respondent <input type="checkbox"/> OIL <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 type="checkbox"/> IJC memo (BIA) <input type="checkbox"/> unknown <input type="checkbox"/> email <input type="checkbox"/> other: _____
date of complaint source	complaint source contact information
(i.e., date on letter, date of appellate body's decision) Letter dated June 14, 2013 received by ACIJ June 17, 2013.	name: _____ address: _____ email: _____ phone: _____ fax: _____
additional complaint source details	
(i.e., DHS component, media outlet, third party details, A-number) (b) (6)	(b) (6)

IJ name	base city	ACIJ
(b) (6)	(b) (6)	Thomas Y.K. Fong
relevant A-number(s)	date of incident	
A(b) (6)	June 11, 2013 Master Calendar hearing.	
allegations		
<p>Respondents' counsel seeks the ACIJ to "overrule" or "intervene" with IJ (b) (6) decision to consolidate/transfer a wife's case with her husband's case that is presently before IJ (b) (6). Despite both spouses being represented by the same complainant atty and filing asylum claims, the atty asserts that the wife/female R. desires a separate "confidential" hearing in order to avoid her spouse hearing about a "personal, traumatic, (forced) abortion." He claims the husband's case is a 208 unrelated religious percu claim. He also refuses to have his other client (husband) waive his right to present at all times of any joint hearing, i.e. be excused from court during his wife's asylum testimony, as an alternate resolution of joined hearings before one IJ. He appears to assert, but does not explicitly state, that they will not be witnesses to one another's asylum claims. Finally he believes it is gender discrimination to join a wife's case with a husband's as opposed to vice versa.</p>		
nature of complaint		

<input checked="" type="checkbox"/> in-court conduct	<input type="checkbox"/> out-of-court conduct	<input checked="" type="checkbox"/> due process	<input type="checkbox"/> bias	<input type="checkbox"/> legal	<input type="checkbox"/> criminal
<input type="checkbox"/> incapacity	<input type="checkbox"/> other: _____				

Immigration Judge Complaint Intake Form

date	action	initials
6/17/2013	Received the written "request to overrule" IJ (b) (6) consolidation order. Completed initial review of the atty's letter and provided a copy to IJ (b) (6) to discuss (b) (6) position on the matter.	
6/18	IJ (b) (6) and I discussed the issues. (b) (6)s willing to reconsider the consolidation order, but desires complainant atty to set forth in writing clearly his legal and factual grounds. (b) (6) believes he should file a Motion to Reconsider the consolidation and was leaning toward granting his motion if he intended as implied that neither spouse would be testifying in one another's claim. I stated I would contact the atty to do so. Called and left a message with atty's office to call me as related to this matter.	
6/19	<p>Atty (b) (6) and ACIJ discuss the matter on the phone. I started with stating that I had received his "complaint letter" and before I could say more, he interjected and stated that his letter was "not a complaint against IJ (b) (6) that (b) (6) is a very good judge", that he believed (b) (6) only made a legal error in consolidating the cases". I stated, "So this is not a complaint?" He reiterated, "my letter is not a complaint" but was intended only to ask for my intervention in the case.</p> <p>I then informed him that IJ (b) (6) desired that he set forth in writing in a Motion to Reconsider what he wrote in the letter to me setting forth his legal and factual grounds. He said he would do so. I noted that IJ (b) (6) (b) (6) and planning to go on extended (b) (6) leave within two weeks or less; so he needed to get his MTRconsider filed asap or it may not be responded to before the Oct 2013 consolidated hearing before IJ (b) (6). He stated he knew this and would do so. I finally asked he provide me a copy of his motion and he stated he would do so.</p> <p>I informed IJ (b) (6) and the intake unit staff that a MTRconsider should be filed soon. Awaiting the MTRconsider before I proceed any further with a former response letter.</p> <p>Note: I have not yet been able to listen to the DAR record as it has yet to be available on the DAR system. But see my initial notes and evaluation below.</p>	
6/20	Complainant attorney filed his MTRconsider with IJ (b) (6)	
7/2	IJ (b) (6) and I met again (b) (6) provided a copy of (b) (6) decision granting the motion to reconsider vacating (b) (6) order to consolidate the two matters, and taking jurisdiction back to hear the female R's case separately from her husband's. (b) (6) and I spoke about the decision to do so. I told (b) (6) that I would regardless write a letter responding to the attorney's letter. I did not find any error in IJ (b) (6) initial ruling to consolidate the two cases nor do I find fault with her reconsidering and vacating (b) (6) original order. No action necessary. Although the attorney asserted it was not a complaint against IJ (b) (6). I find no reason to intervene in this matter, nor do I find merit to the "complaint".	

Rev. May 2010

(b) (5)

(b) (5)

RESPONSE LETTER TO COMPLAINANT ATTY:

U.S. Department of Justice

Executive Office for Immigration Review

Immigration Court

Thomas Y. K. Fong
Asst. Chief Immigration Judge

606 S. Olive Street, 15th Floor
Los Angeles, California 90014

July 17, 2013

(b) (6)

Re: Request to "Overrule Judge (b) (6) Order to Consolidate" – (b) (6)

(b) (6)

and (b) (6)

(b) (6)

This letter is the formal response to your above request that as Judge (IJ) (b) (6) (b) (6) supervisory judge, I "overrule" a June 11, 2013 Order of Consolidation issued by (b) (6) in the above two respondents' cases. In your letter you asserted that IJ (b) (6) both violated the Immigration Court Practice Manual (ICPM) and your clients' due process rights by consolidating their matters over your objection.

In your letter and our subsequent telephone discussion held on June 20, you stated that even though the two respondents are husband and wife, that their asylum or persecution claims were based on different factual and legal grounds. Specifically that her case was based on being a member of a particular social group (forced abortion) and his on religious grounds unrelated to her claim. You wrote that the husband had no knowledge of this forced abortion that occurred before they even knew one another. You further stated that she did not want this information disclosed to him and that you were not planning to call either as witnesses in the other's case. But, it is troubling to note that you failed to disclose their subsequent marriage relationship to either Judge (b) (6) or Judge (b) (6) who presides over the husband's matter.

In our discussion you emphasized that your letter was "not a complaint" against Judge (b) (6) but only a desire that I intervene in the consolidation ruling. I asked whether all the issues you raised in your letter and in our discussion were also presented to the IJ, and further recommended you file a Motion to Reconsider with Judge (b) (6) setting forth these legal and factual arguments you made to me. You stated that you would do so immediately, and in fact did with the filing of a Motion to Reconsider on the same day, June 20. Judge (b) (6) did rule upon your motion issuing a Order on July 2, voiding (b) (6) earlier order to consolidate.

Regardless, it is important that I respond to your concerns and assertions that the ICPM and your clients' due process rights were violated. First, you allege that the IJ granted the government's attorney's Oral Motion to Consolidate in violation of the ICPM rules. This is both factually and procedurally incorrect. You failed to properly cite the ICPM giving the IJ authority to consolidate matters within (b) (6) own discretion irrespective of objections of the parties. The Cover Page of the ICPM specifically refers all users to Chapter 1.1 before consulting any information in the ICPM. On the first page of that chapter a "Disclaimer" notes that the ICPM "shall not limit the discretion of the IJ to act". Further, Oral Motions are commonly made in all courts and ruled upon orally by judges. They is

no mandatory requirement that they be made only in writing or ruled on in writing. In this instance, you couched your oral objections and they were initially overruled. As I suggested, you had legal and procedural remedies to file a Motion to Reconsider (see Chapter 5.8, page 97); and/or take an Interlocutory Appeal of the ruling to the BIA. Further, it was presumptuous of you to dictate a time limit for the court to respond to your letter, let alone attempt to intimidate the court with threatened federal USDC action.

Instead, in your letter you loosely referred to the ICPM without citing any specific section or language to support your legal position, but failed to properly cite its language dealing with Motions to Consolidate. I refer you to Chapter 4.21(a), page 85, which is referenced from Chapter 5.10(p), page 102. It states that an IJ can in (b) (6) own "discretion" can consolidate cases regardless of the parties. This is exactly what Judge (b) (6) did at the hearing on June 11, separate and apart from the government's motion to do so.

Further, both the applicable regulation and case law give a judge the authority to determine how and in what manner two or more cases are consolidated. See generally, 8 C.F.R. 1240.1(a)(iv); Matter of Taerghodsi, 16 I.&N. Dec. 260, 262-263 (BIA 1977) (an immigration judge may consolidate cases of different respondents to promote administrative efficiency); see also Chou v. INS, 774 F.2d 1318 (5th Cir. 1985) and Matter of Quintero, 18 I.&N. Dec. 348 (BIA 1982) (an immigration judge has the authority to set his dockets in the most efficient manner he deems appropriate). Our general rule for consolidation is not mandatory and the manner of consolidation is based on a case-by-case examination and could even result in no consolidation.

Finally, if as you state, the reason for seeking separate hearings is the female respondent's desire to keep her husband from hearing the sordid details of her forced abortion --- two separate hearings could and would be considered even if both matters were before the same judge. This has commonly been done in the past in the (b) (6) (b) (6) immigration court. Regardless, as noted earlier, Judge (b) (6) based upon your representations, has reversed (b) (6) ruling and will retain separate jurisdiction of the female respondent's case. I would have supported (b) (6) initial ruling to consolidate as well as (b) (6) present reconsideration of this ruling.

Sincerely,

Thomas Y.K. Fong
Asst. Chief Immigration Judge

TYKF/sk

(b) (6)

received
JUN 17 2013

Telephone (b) (6)

Facsimile (213) (b) (6)

(b) (6)

June 14, 2013

Thomas Y.K. Fong
Assistant Chief Immigration Judge
Los Angeles Immigration Court
606 South Olive Street, Suite 915
Los Angeles, California 90014

RECEIVED
DEPARTMENT OF JUSTICE
JUN 14 AM 11:23
EXECUTIVE OFFICE OF
IMMIGRATION REVIEW
(b) (6)

Re: REQUEST TO OVERRULE JUDGE (b) (6) ORDER TO CONSOLIDATE MY
CLIENT (b) (6) ASYLUM CASE WITH THAT OF
MY CLIENT AND HER HUSBAND (b) (6) IN
PROCEEDINGS BEFORE JUDGE (b) (6)

Dear Honorable Judge Fong:

On June 11, 2013, at (b) (6) morning master calendar hearing, Judge (b) (6) ordered, over my objection, that my client (b) (6) asylum case be consolidated with that of her husband (b) (6) and transferred to Judge (b) (6) for a joint master hearing on October 7, 2013. They married in the United States on July 13, 2012. (b) (6) case involves a forced abortion which took place when she was still single in China and has nothing to do with her husband's case. His case is based on religious persecution in China as a Christian. The government made the motion to consolidate orally, which the government is not supposed to do according to the EOIR Practice Manual. The manual requires that motions to consolidate by a party be done through the timely filing of a written motion, allowing the other party sufficient time to respond. Not even this minimum due process protection was followed or respected in this case.

As I explained to Judge (b) (6) I am not waiving my client (b) (6) right to a private, confidential hearing. She does not want to discuss her personal, traumatic abortion experience in China involving a former lover and her own private experience in the presence of her husband, who did not even know her then. Nor am I waiving (b) (6) absolute due process right to be present at all times during his removal hearings, including the merit hearings. Thus, I will not agree on his behalf to have him excused, as Judge (b) (6) suggested, while his wife testifies about her forced abortion at a consolidated hearing.

(b) (6) as a woman, also objects to the discriminatory policy of transferring her case to Judge (b) (6) based on the mere fact that her male husband's case is before that Court.

Honorable Judge Fong
Page Two

As noted, there are several key concerns I have about the consolidation of these two cases:

1. My client (b) (6) has the right to a confidential asylum hearing without the presence of her husband. She filed for asylum before they even married and there is nothing in common between the two claims. They did not know each other in China. This right is statutory in nature, and cannot be abrogated by the administrative convenience of consolidating cases over the objection of the asylum applicant herself and her counsel.
2. Any alien has the absolute due process right to be present during all times when testimony is taken at a removal hearing. I will not waive (b) (6) right to be present throughout his removal hearings to protect the confidentiality interests of (b) (6).
3. I cannot prepare (b) (6) or her husband (b) (6) for a joint, consolidated hearing without counseling both together. As they are both separate clients of mine, and are both entitled to private, confidential communications with counsel, I would be violating the attorney-client privilege of confidential communications by preparing their cases for a consolidated hearing. Doing so is contrary to the (b) (6) Rules Of Professional Responsibility and creates a conflict of interest.
4. Consolidation of these two disparate claims with each other could be prejudicial to either (b) (6) if either one fails to cooperate in preparing his or her case, leading to credibility or corroboration problems for the other. There is thus a potential conflict of interest in having two separate asylum claims consolidated where the asylum applicants wish to proceed separately on their own claims. This right should again not be trumped due to some perceived administrative convenience.
5. The policy of automatically consolidating two separate asylum claims filed by a wife and a husband with the husband's case is discriminatory on its face, and unconstitutional. It is on its face a sexist and arbitrary policy. If consolidation is to occur with the consent of the asylum applicants, they should determine which of the two judges hears the case.

I hope you can intervene in this matter, Judge Fong, so that it is not necessary to take the additional step of going to the United States District Court to seek injunctive relief. I believe that a thirty-day period is a reasonable period for you to review and rule on this request and for the government to respond, if they so choose. They have been served today with a copy of this letter.

The relief I am requesting is the complete restoration of the prior status of these two cases and where they are heard and that Judge (b) (6) order moving (b) (6) case to Judge (b) (6) and consolidating it with that of her husband be rescinded.

(b) (6)

(b) (6)

CERTIFICATE OF SERVICE

I, (b) (6), hereby declare that I served a true and correct copy of the foregoing letter on the Office of Chief Counsel, DHS, on June 14, 2013 personally at the following address of record:

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

(b) (6)