



Detail

Complaint Number: 752

Immigration Judge: (b)(6)

Complaint Received Date: 05/01/13

Current ACIJ
Dufresne, Jill H.

Base City
(b)(6)

Status
CLOSED

Final Action
Oral counseling

Final Action Date
05/06/13

Past ACJIS:

A-Numbers(s)	Complaint Nature(s)	Complaint Source(s)
(b)(6)	Legal	BIA

Complaint Narrative: Inadequate decision (for the 2nd time)

Complaint History

05/03/13 Database entry created
05/06/13 Oral counseling

Sep 11, 2013

1 of 1

Memorandum



Subject	Date
(b) (6) (BIA April 24, 2013)	May 1, 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 April 24, 2013, and relevant portions of the record in the above-referenced matter.

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

Further, the Board anticipates returning the record of proceedings for this remanded case to the Immigration Court in one week. If you wish to review the record prior to its return to the Immigration Court, please contact Suzette Henderson.

Thank you for your attention to this matter.

Attachments

Falls Church, Virginia 22041

File: A(b) (6)

Date: APR 24 2013

In re: (b) (6)

IN ASYLUM AND/OR WITHHOLDING PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANT: (b) (6) Esquire

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

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The Department of Homeland Security ("DHS") has appealed from the decision of the Immigration Judge dated November 1, 2010, granting the applicant's application for asylum. The applicant, a native and citizen of Albania, opposes the appeal. The record will be remanded to the Immigration Court.

This case was last before the Board on December 29, 2009, when we found inadequate the Immigration Judge's decision of August 27, 2008, and remanded the record for preparation of a full decision which includes clear and complete findings of fact that are supported by the record and is in compliance with controlling law. *See Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002) (remand appropriate where Immigration Judge's decision almost completely lacked factual findings and legal analysis); *Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999) (stating that the Immigration Judge is "responsible for the substantive completeness of the decision"); 8 C.F.R. § 1003.1(d)(3)(iv) (Board may not engage in fact finding except for taking administrative notice of commonly known facts). The Immigration Judge has now issued a second decision which contains limited factual findings and virtually no legal analysis, including any findings as to whether the respondent suffered past persecution. *See Matter of D-I-M-*, 24 I&N Dec. 448 (BIA 2008).

Additionally, the DHS argues that there has been a change in conditions in Albania since the applicant's departure, and the decision of the Immigration Judge contains almost no analysis of current country conditions. *See* 8 C.F.R. § 1208.13(b)(1)(i)(A); *see, e.g., Nako v. Holder*, 611 F.3d 45 (1st Cir. 2010) (finding substantial evidence supported Board's conclusion that fundamental change in Albanian political situation since 2001 rebutted presumption that applicant has well-founded fear of persecution by members of Socialist party); *Mehmeti v. U.S. Atty. Gen.*, 572 F.3d 1196 (11th Cir. 2009) (finding that substantial evidence supported Board's determination that changed country conditions in Albania negated presumption that asylum applicant has well-founded fear of persecution based on persecution he had experienced in Albania); *Uruci v. Holder*, 558 F.3d 14 (1st Cir. 2009) (same). The Immigration Judge's decision is once again inadequate for our review. Accordingly, we will remand the record to the

Immigration Court. The Immigration Judge should conduct a further hearing and enter and full and complete decision.

ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and the entry of a new decision.



FOR THE BOARD

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

(b) (6)

RECEIVED
DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
1 2000 NOV 26 A 11:20
BOARD OF
IMMIGRATION APPEALS
OFFICE OF THE CLERK

File #: A (b) (6)

In the Matter of:

(b) (6)

Respondent.

)
)
) IN REMOVAL PROCEEDINGS
)
)

DECISION OF THE IMMIGRATION JUDGE

The respondent is an adult male native and citizen of the Albania whose claim for asylum is based upon his political opinion. Specifically, respondent was a member of the Democratic Party who worked as a poll watcher in the city of Vlora in October of 2000. After he performed his responsibility as a poll watcher he was beaten two times by members of the opposition Socialist Party. The Socialist's realized that Respondent had witnessed incidents of fraud in the local elections. When Respondent attempted to report these incidents he was stopped and taken to the police station and was beaten by officials. He was threatened if he persisted in reporting the incidents.

Despite being threatened Respondent filed a written complaint with the Central Elections Commission. He also wrote a personal affidavit of his experience with the agents of the police and the Socialist Party members who beat him.

In October of 2000, respondent received a Subpoena to give testimony at the office of the Federal Prosecutor in Tirana. When he appeared he was personally interrogated by a supervisory officer who threatened Respondent for coming forward with the complaints.

In November of 2000, respondent appeared in court for a hearing as a witness regarding the charges of the Democratic Party, when a second hearing date was set. He was later subpoenaed a second time, interrogated, and threatened. After a third subpoena, Respondent was advised by his family to flee Albania for the U.S. He secured a fraudulent passport and entered the U.S. on February 1, 2001. Respondent fears returning to Albania because of continued persecution by the Communists.

Respondent (b) (6) testified credibly to his participation with and membership in the Democratic Party. The respondent's testimony was consistent on material aspects of his mistreatment, both internally and with his applications. Consequently, his testimony is deemed credible on all material aspects of his claim. Furthermore, current conditions in Albania, whose human rights record relating to Democratic Party members is described in the 2005 Country Reports for Human Rights Practices as "poor", still poses a problem for respondent.

Given that respondent has established past persecution and the country conditions in Albania have not changed, respondent is entitled to asylum as a matter of law.

Date: November 1, 2010

(b) (6)

U.S. IMMIGRATION JUDGE

RECEIVED
DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW

2010 NOV 26 A 11:20

BOARD OF
IMMIGRATION APPEALS
OFFICE OF THE CLERK

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A(b) (6)

Date:

DEC 29 2009

In re: (b) (6)

IN ASYLUM-ONLY PROCEEDINGS

APPEAL AND MOTION

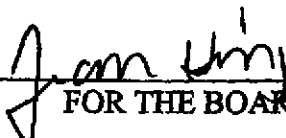
ON BEHALF OF APPLICANT: (b) (6) Esquire

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

The Department of Homeland Security ("DHS") appealed from the Immigration Judge's August 27, 2008, decision granting the applicant asylum. During the pendency of the appeal, the DHS submitted a motion to remand. The motion will be granted, and the record will be remanded.

Consistent with the DHS's arguments in its motion, the Immigration Judge did not prepare a separate oral or written decision in this matter setting forth the reasons for the decision. An explanation of the reasons in the transcript is not sufficient. Accordingly, the record will be remanded to the Immigration Judge for preparation of a full decision. *See Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999). The Immigration Judge is to include in the decision clear and complete findings of fact that are supported by the record and are in compliance with controlling law. *See Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). Upon preparation of the full decision, the Immigration Judge shall issue an order administratively returning the record to the Board. The Immigration Judge shall serve the administrative return order on the applicant and the DHS. Thereafter, the Board will give the parties an opportunity to submit briefs in accordance with the regulations.

ORDER: The motion to remand is granted, and the record is remanded to the Immigration Court for further action as required above.


FOR THE BOARD

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

(b) (6)

In the Matter of:

(b) (6)

Applicant

On Behalf of the Applicant

(b) (6)

Case No: A(b) (6)

ASYLUM-ONLY
PROCEEDINGS

On Behalf of the DHS

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

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on AUGUST 27, 2008 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:

- [X] 1. Asylum is:
[X] Granted
[] Withdrawn
[] Denied
- [] 2. Withholding of Removal under INA 241(b) (3) is:
[] Granted
[] Withdrawn
[] Denied
- [] 3. Withholding of Removal under the Convention Against Torture is:
[] Granted
[] Withdrawn
[] Denied
- [] 4. Deferral of Removal under the Convention Against Torture is granted.
- [] 5. _____

Date: 8/27/08

(b) (6)

Immigration Judge

APPEAL: WAIVED

APPEAL: [X] RESERVED [] DENIED

APPEAL DUE BY: 9/26/08

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: [] ALIEN [] ALIEN C/O CUSTODIAL OFFICER [X] ALIEN'S ATTY/REP [] INS
DATE: 8/27/08 BY: COURT STAFF
ATTACHMENTS: [] EOIR-33 [] EOIR-28 [] Legal Services List [] Other

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

(b) (6)

In the Matter of:

(b) (6)

Respondent

A (b) (6)

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of oral decision entered on August 27, 2008. 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 _____
☐ in absentia on the charges as set out in the notice to appear.
- ☐ Respondent's application for voluntary departure was denied and respondent was ordered removed to _____ alternative to _____.
- ☐ Respondent's application for voluntary departure was granted until _____ upon posting a bond in the amount of _____ with an alternative order of removal to _____.
- ☒ Respondent's application for asylum was ☒ granted ☐ denied ☐ withdrawn.
- ☐ Respondent's application for withholding of removal was ☐ granted ☐ denied ☐ withdrawn.
- ☐ Respondent's application for withholding/deferral of removal under Article 3 of the Torture Convention was ☐ granted ☐ denied ☐ withdrawn.
- ☐ Respondent's application for cancellation of removal under Section 240A(a) was ☐ granted ☐ denied ☐ withdrawn.
- ☐ Respondent's application for cancellation of removal under Section 240A(b) was ☐ granted ☐ denied ☐ withdrawn. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
- ☐ Respondent's application for a waiver under Section ____ of the INA was ☐ granted ☐ denied ☐ withdrawn ☐ other.
- ☐ Respondent's application for adjustment of status under Section ____ of the INA was ☐ granted ☐ denied ☐ withdrawn. If granted, it was ordered that respondent be issued all appropriate documents necessary to give effect to this order.
- ☐ 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 discretionary relief for failure to appear as ordered in the immigration Judge's oral decision.
- ☐ Proceedings were terminated, without prejudice.
- ☐ Proceedings were administratively closed.
- ☐ Other: _____.

Date: 8/27/08

Appeal: ~~WAIVED/RESERVED (A/B)~~

APPEAL DUE BY: 7/26/08

(b) (6)

Immigration Judge

Immigration Judge Complaint Intake Form

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

Date Received at OCIJ: _____

complaint source information	
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 checked="" type="checkbox"/> BIA <input type="checkbox"/> respondent <input type="checkbox"/> Circuit <input type="checkbox"/> EOIR <input type="checkbox"/> DHS <input type="checkbox"/> Main Justice <input type="checkbox"/> OIL <input type="checkbox"/> OPR <input type="checkbox"/> OIG <input type="checkbox"/> media
complaint receipt method	
<input checked="" 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"/> phone (incl. voicemail) <input type="checkbox"/> in-person <input type="checkbox"/> other: _____
date of complaint source (i.e., date on letter, date of appellate body's decision) 5/1/13	complaint source contact information name: DAVID NEAL, Chair address: BIA email: _____ phone: _____ fax: _____
additional complaint source details (i.e., DHS component, media outlet, third party details, A-number)	

complaint details		
IJ name (b) (6)	base city (b) (6)	ACIJ [Signature]
relevant A-number(s) (b) (6)	date of incident 11/1/10	
allegations inadequate decision (for the second time)		
nature of complaint		
<input type="checkbox"/> in-court conduct <input type="checkbox"/> incapacity	<input type="checkbox"/> out-of-court conduct <input type="checkbox"/> other: _____	<input type="checkbox"/> due process <input type="checkbox"/> bias <input checked="" type="checkbox"/> legal <input type="checkbox"/> criminal

Actions for processing complaints against IJs
(actions in blue are possible resolutions)

5/4/13

Initial Processing	
<ul style="list-style-type: none"> • source initiated communication • EOIR received communication from source • EOIR sent communication to source • EOIR requested additional information from source • additional information requested from source was received at EOIR • complaint referred to ACIJ • complaint re-opened • alleged conduct occurred • OCIJ consulting with ELR 	<div style="background-color: black; color: white; font-size: 2em; padding: 10px; text-align: center;">(b) (6)</div> <p><i>D. Presne</i></p>

OPR/OIG Processing	
OPR Processing	OIG Processing
<ul style="list-style-type: none"> • complaint referred to OPR • OPR declined to investigate or closed without further action • OPR finding <ul style="list-style-type: none"> ◦ professional misconduct (intentional, reckless disregard) ◦ no professional misconduct (poor judgment, mistake, IJ acted appropriately) • OPR recommendation <ul style="list-style-type: none"> ◦ recommended discipline ◦ other – [details] • OPR action referred to ACIJ 	<ul style="list-style-type: none"> • complaint referred to OIG • OIG referred complaint back to EOIR for management action • OIG issued report • other OIG action – [details] • OIG action referred to ACIJ

Complaint Dismissed or Concluded		
Complaint Dismissed	Complaint Concluded	Other
<ul style="list-style-type: none"> • frivolous • merits-related • allegations disproven • allegations cannot be substantiated • failure to state a claim 	<ul style="list-style-type: none"> • corrective action already taken • intervening event made action unnecessary (IJ termination, IJ termination during trial period, IJ resignation, IJ retirement, other) 	<ul style="list-style-type: none"> • merged into another complaint • resolved per another complaint

Management Action	
Corrective Action	Disciplinary Action
<ul style="list-style-type: none"> • oral counseling • written counseling • training • performance-based action (PIP) • other – [details] • corrective action occurred date(s) 	<ul style="list-style-type: none"> • discipline proposal (suspension, removal, other) • discipline decision (reprimand, suspension, removal, other) • discipline imposed date(s)

Subsequent Action
<ul style="list-style-type: none"> • challenge filed (grievance, arbitration, EEOC, MSPB, other) • subsequent decision (reversed, upheld, mitigated) • subsequent decision imposed date(s)

Miscellaneous Action
<ul style="list-style-type: none"> • none of the above – [details]