

EOIR FOIA Processing (EOIR)

From: Burr, Sarah (EOIR)
Sent: Wednesday, March 17, 2010 2:34 PM
To: Keller, Mary Beth (EOIR)
Subject: (b) (6) updates

I had Felicia fax a copy of a federal civil rights action filed against (b) (6) by a detainee by the name of (b) (6) (b) (6). It was sent to Deborah's attention. I read it and it does not look worrisome to me, but I'm no expert on that type of claim. Marta Rothwarf has been in touch with Judge (b) (6) about this matter.

Regarding a complaint made about Judge (b) (6) by (b) (6) another detainee, the original letter I sent him in February has been returned. I have reviewed the ROP and the same allegations he makes were made in an appeal to the BIA. The BIA dismissed his appeal a few weeks ago. I am sending you a copy of the letter that is going out to (b) (6) (b) (6) who we located at (b) (6) County Jail in (b) (6). Basically, I did not find his allegations to be substantiated by the record. (b) (5)
(b) (5)

Sarah M. Burr
Assistant Chief Immigration Judge
26 Federal Plaza
New York, N.Y.

4059; 5901

EOIR FOIA Processing (EOIR)

From: Fong, Thomas (EOIR)
Sent: Monday, May 10, 2010 10:52 AM
To: Keller, Mary Beth (EOIR)
Cc: Moutinho, Deborah (EOIR); Fong, Thomas (EOIR)
Subject: RE: IJC Memo - Matter of (b) (6) (BIA October 27, 2009)

Mary Beth, You are correct on all four cases. I will send you a copy of the cover email dated 12/31/09 that I sent to (b) (6) so that (b) (6) could prep for the meeting (b) (6) and I held on 1/13/10. It shows these cases and other matters we were (did) to discuss in that meeting. I will also prepare and send this week four separate "IJ Complaint Intake Form(s)" for each one for Deborah to record to show actions and resolution. Tom

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 (b) (6)

From: Keller, Mary Beth (EOIR)
Sent: Friday, May 07, 2010 1:34 PM
To: Fong, Thomas (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: RE: IJC Memo - Matter of (b) (6) (BIA October 27, 2009)

Tom,
One more, Matter of (b) (6) same month, same question !
Tx.
mtk

From: Keller, Mary Beth (EOIR)
Sent: Friday, May 07, 2010 4:32 PM
To: Fong, Thomas (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: RE: IJC Memo - Matter of (b) (6) (BIA October 27, 2009)

Tom,
With regard to this case, as well as Matter of (b) (6) and Matter of (b) (6) all in Oct 2009. I don't have a record of "resolutions". Were these matters handled in (b) (6) performance meeting in Jan 2010?
Tx.
mtk

From: Fong, Thomas (EOIR)
Sent: Friday, October 30, 2009 3:40 PM
To: Keller, Mary Beth (EOIR)
Subject: RE: IJC Memo - Matter of (b) (6) (BIA October 27, 2009)

Acknowledged.

10175; 10270

Thomas Y.K. Fong
Assistant Chief Immigration Judge
Immigration Court/EOIR/DOJ
606 South Olive Street, 15th Floor
Los Angeles, CA 90014
(213)894-3906 (b) (6)

From: Keller, Mary Beth (EOIR)
Sent: Friday, October 30, 2009 11:52 AM
To: Fong, Thomas (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: FW: IJC Memo - Matter of (b) (6) (BIA October 27, 2009)

Tom,
Judge (b) (6)
mtk

From: Smith, Terry (EOIR)
Sent: Friday, October 30, 2009 2:13 PM
To: O'Leary, Brian (EOIR); Keller, Mary Beth (EOIR)
Cc: Liebowitz, Ellen (EOIR); Weil, Jack (EOIR); Moutinho, Deborah (EOIR); Smith, Terry (EOIR)
Subject: IJC Memo - Matter of (b) (6) (BIA October 27, 2009)

Hi Brian & MaryBeth,

Find attached an IJC memo in the *Matter of* (b) (6) (BIA October 27, 2009).

Thank you,
Terry Smith

10176; 10271

Keller, Mary Beth (EOIR)

From: Burr, Sarah (EOIR)
Sent: Wednesday, November 18, 2009 11:55 AM
To: Keller, Mary Beth (EOIR)
Subject: RE: Other (b) (6) cases

Mary Beth, I'm going to do a (b) (6) redux once I get a free moment. That will probably be early next week. Sarah

From: Keller, Mary Beth (EOIR)
Sent: Monday, November 16, 2009 4:02 PM
To: Burr, Sarah (EOIR)
Subject: Other Hom cases

Sarah,
The following are the items that I don't believe have updates on regarding Judge (b) (6).

Matter of (b) (6)
Mater of (b) (6)
Matter of (b) (6)
Matter of (b) (6) (we discussed sending to OPR but did not)
Matter of (b) (6)

Apologies if I have this info somewhere and am missing it, it's very possible.

I am attaching the whole db on (b) (6) for you.

(b) (5)

mtk
MaryBeth Keller
Assistant Chief Immigration Judge
EOIR/OCIJ
703/305-1247
(b) (6)

4207; 4232

4/30/2010

(b) (6) *file***Keller, Mary Beth (EOIR)**

From: Burr, Sarah (EOIR)
Sent: Wednesday, May 26, 2010 12:04 PM
To: Keller, Mary Beth (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: corrections to (b) (6) IJ complaint report

(b) (6) complaint #159

On oral counseling line, it should be marked closed.

(b) (6) complaint # 68

On 4/9/10 line put that ACIJ is considering as part of larger disciplinary issue.

(b) (6) complaints #180 and 148

On 12/9/06 line and 4/12/07 put that conduct occurred prior to retraining in November, 2007. Counseled on this issue on Jan. 26, 2010 as part of PWP conference. Will be addressing same issue in 7/10 progress report. I would mark both of these as "Closed", since it is a continuing area of counseling and retraining. I do plan to have (b) (6) attend some mandated training at the IJ conference.

(b) (6) complaint 147.

I do not think this is properly included as a complaint. It's really a pro se motion to reopen. In May of 2010 I brought the alien's correspondence to Judge (b) (6) and suggested that (b) (6) deem it a pro se motion to reopen. The judge will rule on it in due course.

(b) (6) complaint # 21

On 3/17/10 line, add that IJ orally counseled about some of the rather blunt language (b) (6) used in court with the respondent.

(b) (6) complaint # 156

Decision issued by IJ on 7/17/09. Complaint should be marked closed.

(b) (6) a complaint should be opened based on the (b) (6) Circuit decision in (b) (6) where (b) (6) Circuit where the (b) (6) Circuit remanded to another IJ because (b) (6) created an appearance of bias or hostility, rendering the proceedings fundamentally unfair. Found the judge abrogated (b) (6) responsibility to be a neutral arbiter by relying on speculation, unfounded and generalized conclusions about sexual orientation, and fundamentally misunderstanding the basis for the alien's claim. (b) (6) Circuit ruled on (b) (6).

Resulted in an OPR investigation. March 19, 2010, OPR concluded that (b) (6) engaged in professional misconduct when (b) (6) engaged in comments about respondent's sexual orientation and further, that (b) (6) exercised poor judgment in criticizing a judge of coordinate jurisdiction.

ACIJ has provisionally proposed 2 day suspension, but pending at ELR for letter to IJ.

(b) (6) complaints # 62, 55, 175 and 150 should all be updated to indicate that all of these cases are being considered as part of the proposed suspension and the ELR letter.

That's it! Thanks, SMB

Sarah M. Burr
 Assistant Chief Immigration Judge
 26 Federal Plaza
 New York, N.Y.

4233; 4245

1/26/2011

Keller, Mary Beth (EOIR)

From: Sukkar, Elisa (EOIR)
Sent: Tuesday, June 15, 2010 5:00 PM
To: Keller, Mary Beth (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: RE: (b) (6) update?

MTK and Deborah:

I am going to meet with IJ (b) (6) tomorrow. I have 2 matters that I want to go on record to address with (b) (6). They relate to the format of (b) (6) decisions. (b) (6) apparently just received a BIA decision that (b) (6) wanted to discuss with me. I told (b) (6) that I had a few matters to address with (b) (6). We agreed to meet tomorrow.

I know these do not appear on the latest report that Deborah sent out but I will sit down with IJ nevertheless to close out any loops:

Matter of (b) (6) (BIA June 9, 2009) The IJ's decision was in 2002 and was affirmed twice by BIA. But in 2009, they made a comment about (b) (6) format and they vacated the IJ's and their own two previous decisions.

Matter of (b) (6) (BIA February 20, 2009) (b) (5) the only issue here was that the BIA found the credibility determination of the IJ to be clearly erroneous. That is a decision the IJ made on the merits and that was (b) (6) determination. Absent any unusual or unnecessary commentary, it is best to close out. I believe it may be closed out already but if it shows pending anywhere please indicate that upon review by the ACIJ, the matter was properly addressed as an appealable issue by the parties and the BIA.

The one I cannot find is the Matter of (b) (6) IJC memo. Could you please forward? It seems from MTK's comments that the decision was informal but no criticism by BIA.

It also seems that the IJ received one today saying the decision was "terse". I have not seen that one but will review with IJ tomorrow. All of these cases relate to the format of (b) (6) decisions, a matter that has been addressed with IJ before.

Will keep you posted. Thanks. EMS

From: Sukkar, Elisa (EOIR)
Sent: Tuesday, June 15, 2010 4:18 PM
To: Sukkar, Elisa (EOIR)
Subject: FW: (b) (6) pdate?

FYI

From: Keller, Mary Beth (EOIR)
Sent: Tuesday, June 08, 2010 2:35 PM
To: Sukkar, Elisa (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: FW: (b) (6) update?

Elisa,
 Same thing wrt to Matter of (b) (6) which also came back in Feb 2009. IJ dec informal, but no criticism by bia.
 I've attached an email between us genlly discussing.

4322; 4345

11/1/2010

Moutinho, Deborah (EOIR)

From: Keller, Mary Beth (EOIR)
Sent: Friday, November 26, 2010 9:58 AM
To: Moutinho, Deborah (EOIR)
Cc: Romig, Jeff (EOIR)
Subject: (b) (6) FY2009

Deborah,
I spoke w/ Judge Romig about the two (b) (6) matters, 316 and 317. He will probably be sending the forms on these soon, but heads up because the db was showing some funny stuff – i.e., two (340/341) were showing open when they aren't.

ACIJ Romig will send you the date on 316, which was an oral counseling – performance.

317 should be closed out as merits-based, and we should use the date that we used to close out 340 and 341 — they were all interrelated in that they involved clients of the same attorney.

I don't know why those two – 340-341 are still showing up as open, - they are not showing on the open listing, but they are when you go into (b) (6)

Help!

Tx.

mtk

MaryBeth Keller

Assistant Chief Immigration Judge

EOIR/OCIJ

703/305-1247

mary.beth.keller@usdoj.gov

3108; 3180; 4413

11/29/2010

EOIR FOIA Processing (EOIR)

From: Burr, Sarah (EOIR)
Sent: Wednesday, January 26, 2011 2:30 PM
To: Keller, Mary Beth (EOIR)
Subject: RE: (b) (6) complaint 349

I agree that it should be closed as being addressed by subsequent training.

From: Keller, Mary Beth (EOIR)
Sent: Wednesday, January 26, 2011 2:23 PM
To: Moutinho, Deborah (EOIR)
Cc: Burr, Sarah (EOIR)
Subject: (b) (6) complaint 349

D -

This is an old one, still showing as OPEN in the DB. Matter of (b) (6) where BIA remanded to another IJ citing Islam. Judge called r an "unmitigated liar." The judge's conduct occurred 1/31/2006. WRT to another complaint, Judge Burr indicated:

put that conduct occurred prior to retraining in November, 2007. Counseled on this issue on Jan.26,2010 as part of PWP conference. Will be addressing same issue in 7/10 progress report. I would mark both of these as "Closed", since it is a continuing area of counseling and retraining. I do plan to have (b) (6) attend some mandated training at the IJ conference.

(b) (5)

Tx.
mtk
MaryBeth Keller
Assistant Chief Immigration Judge
EOIR/OCIJ
703/305-1247
mary.beth.keller@usdoj.gov

4463



U.S. Department of Justice

Executive Office for Immigration Review

800 Dolorosa Street
Washington Square, Suite 300
San Antonio, Texas 78207
March 18, 2011

Immigration Judge (b) (6)

(b) (6)

Dear Judge (b) (6)

While you were on detail, the Board of Immigration Appeals (BIA) noted your lack of professionalism in the following cases in which you were the Immigration Judge: *Matter of* (b) (6) (b) (6), and *Matter of* (b) (6) (b) (6). You made similar unprofessional remarks in *Matter of* (b) (6) (b) (6). Although you have been previously disciplined for similar conduct, I have decided not to take formal disciplinary action related to these matters. However, this letter will serve as a formal counseling memo, and I will take these cases into account when evaluating your performance.

In (b) (6) the BIA noted intemperate and impatient comments and remanded for hearing before another judge. A sampling of your comments includes: "Give me a break, she rescheduled this hearing. Correct? Correct?" (T14.) "I don't believe that for a moment. Listen, sir. . . . "Well, that was their legal advice to you and you didn't like it, correct?" (T15.) "I don't want the reason, sir, your not being candid, accurate, or truthful. . . . Oh, pure nonsense. All right, sir, you're representing yourself today. Listen. Listen. Stop talking. Stop talking. You are not controlling these proceedings. You can have a tantrum, I don't care." (T 18.) "Then stop acting like a child." (T 19.)

In (b) (6) the BIA noted intemperate and sarcastic comments during the hearing. For example, "Why don't you try listening?" (T16.) "Why don't you pick one answer and stick with it?" (T29.) "Well, my goodness. I guess we shouldn't have this hearing today. . . ." (T 30.) "I am not forgiving people—that's not my job. You have confused me with somebody else who wears a robe, sir." (T31.) "Well, so much for your telling me the truth that you have never seen an application before." (T36.) "Sir, what part of swearing to tell the truth do you not know?" (T46.)

In (b) (6) the BIA also remanded for trial before another judge. The transcript reveals the following unprofessional remarks: "That makes no sense, Counsel, to ask me to reconsider and you're telling me that there's no basis to reconsider." (T12.) "Try thinking about my

Moutinho, Deborah (EOIR)

From: McGoings, Michael (EOIR)
Sent: Friday, May 27, 2011 10:03 AM
To: Moutinho, Deborah (EOIR)
Subject: FW: Two BIA Referrals for (b) (6)

Deborah - I followed up with ACJ (b) (6) after receipt of this email and conducted oral counseling with (b) (6) on Thursday, May 26, 2011. Judge (b) (6) accepts full responsibility for (b) (6) actions in these two BIA referrals and is confident that they will not reoccur.

Michael C. McGoings

Deputy Chief Immigration Judge

From: (b) (6) (EOIR)
Sent: Wednesday, May 25, 2011 7:14 PM
To: McGoings, Michael (EOIR)
Cc: (b) (6) (EOIR)
Subject: Two BIA Referrals for (b) (6)

Good Afternoon Judge McGoings,

Knowing how busy you are and the efforts you have made to talk with me about these two BIA referrals due to my intemperate conduct in court, I thought it may assist you if I sent you this email.

The first one is A (b) (6). I have reviewed pages 5 through 8 of the November 13, 2003 transcript and it is clear I should not have encouraged the respondent and his attorney in the proceeding to withdraw his application for asylum. I had prepared the case and knew that the respondent had disavowed much of the information contained in the application on which he was interviewed at the Asylum Office. However, I had no right to demand that he proceed on that application or withdraw it that day. I recognize this was a violation of his due process rights which impacted him later when he filed his Motion to Reopen to proceed on an application for asylum after his spousal petition was no longer viable and he had no other relief in immigration court. Honestly, I am most embarrassed that the matter was remanded to a different judge and realize how poorly my conduct reflects on the entire judge corps.

The second one is A (b) (6). I have reviewed the entirety of this referral and recognize that my offhanded remarks to the attorney representing the government about the "bad list" by which I was referring to aged cases was completely inappropriate and should never have been mentioned in open court. I recall this case distinctly because I was most frustrated with the lack of assistance from the National Visa Center to schedule the respondent for his consular appointment for his visa based upon his wife's approved petition. Nevertheless, I should have kept my anger in check and acted professional. Also, I realize that my comments about the long working hours and time spent on the bench in a case I heard the day before should not have been mentioned because it had nothing to do with the circumstances of the case of (b) (6).

The Board decision refers to my impatience regarding delays in the respondent's case and tells me clearly that these comments are misplaced. I accept and agree with that valid criticism. Despite my impatience, the decision I rendered was complimentary of the respondent and discussed all the equities present in this case even though I held that he was unable to establish the requisite exceptional and extremely unusual hardship to his qualifying relatives if he had to return to Guatemala.

I accept full responsibility for these indiscretions. Each day I am on the bench I strive to have patience and conduct a full and fair hearing without bias. I am very sorry for these lapses. Please feel free to call me anytime if you want to discuss these referrals further.

Sincerely,

(b) (6)

Sincerely,

(b) (6)

4726; 4792

5/27/2011

EOIR FOIA Processing (EOIR)

From: Burr, Sarah (EOIR)
Sent: Wednesday, June 29, 2011 2:49 PM
To: Keller, Mary Beth (EOIR)
Subject: RE: Open Complaints for 3rd Qtr

Fine.

From: Keller, Mary Beth (EOIR)
Sent: Wednesday, June 29, 2011 11:31 AM
To: Burr, Sarah (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: RE: Open Complaints for 3rd Qtr

Sarah,
There is no disposition that captures "moot", so, my suggestion instead of using the "other" code is to call this merits based and dismiss it on that basis. (b) (5)

(b) (5)
If so, we will close it out with that disposition as of the 6/24/2011 date of your email below.

Let me know if that is ok.

Tx.

mtk

From: Burr, Sarah (EOIR)
Sent: Friday, June 24, 2011 12:17 PM
To: Moutinho, Deborah (EOIR)
Subject: RE: Open Complaints for 3rd Qtr

With regard to complaint number 498, the attorney was substituted out on May 13, 2011 hearing date when (b) (6) entered a notice of appearance. The complaint is moot.

With regard to complaint number 499, I spoke to the IJ today about the (b) (6) Circuit criticism and reiterated that (b) (6) cannot speak to represented respondent's in the absence of counsel. Closed with oral counseling.

From: Moutinho, Deborah (EOIR)
Sent: Friday, June 24, 2011 11:59 AM
To: Burr, Sarah (EOIR)
Subject: RE: Open Complaints for 3rd Qtr

Hello,

You can just send me the updates, via email, I already have the initial form.

Deborah

From: Burr, Sarah (EOIR)
Sent: Friday, June 24, 2011 11:46 AM
To: Moutinho, Deborah (EOIR)
Subject: RE: Open Complaints for 3rd Qtr

How do you want me to update them?

4852; 4857

Moutinho, Deborah (EOIR)

From: Kelly, Ed (EOIR)
Sent: Monday, August 22, 2011 5:08 PM
To: Moutinho, Deborah (EOIR)
Subject: RE: Status of Open Complaints in the Database

(b) (6) #524 is complete – oral counseling on 8/22/2011. (b) (5)
Thanks, -Ed

From: Moutinho, Deborah (EOIR)
Sent: Monday, August 22, 2011 1:13 PM
To: Kelly, Ed (EOIR)
Subject: RE: Status of Open Complaints in the Database

Thank you for your quick reply, I will close out # 519 as oral counseling on 8/17

Deborah

From: Kelly, Ed (EOIR)
Sent: Monday, August 22, 2011 1:12 PM
To: Moutinho, Deborah (EOIR)
Subject: RE: Status of Open Complaints in the Database

Deborah,

519 -- IJ (b) (6) -- is done – oral counseling on 8-17-11.

524 (b) (6) will be done as soon as I talk to (b) (6) this week (b) (6) off to (b) (6) on detail but I'm going to give (b) (6) a call.) Cheers,

-Ed

From: Moutinho, Deborah (EOIR)
Sent: Monday, August 22, 2011 1:07 PM
To: Kelly, Ed (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: Status of Open Complaints in the Database

Good Afternoon ACIJ Kelly

Per ACIJ Keller's request I am sending you a summary report of all open complaints from your courts currently in the database along with detail report that shows you the specifics concerning each of the open complaints.

After reviewing the reports please let me know if there are any updates and or resolutions to the open complaints – no need to complete a new complaint intake sheet just send me the update along with the corresponding complaint number found on the left hand side of the summary report.

Please let me know if you have any questions or require additional assistance.

Thank you
Deborah

Deborah M. Moutinho

Staff Assistant
Office of the Chief Immigration Judge
Executive Office for Immigration Review
(703) 605-1389

4967; 6623

8/24/2011

Keller, Mary Beth (EOIR)

From: Keller, Mary Beth (EOIR)
Sent: Wednesday, August 10, 2011 1:19 PM
To: Burr, Sarah (EOIR)
Subject: Re: 2 IJC memos from the BIA

Sarah

I will take a look next week. Meantime, it sounds to me like the (b) (6) complaint may be dismissed as unsubstantiated and (b) (6) complaint may be dismissed as merits based. (b) (5)

[REDACTED]

[REDACTED]

[REDACTED]

Mtk

Sent from my BlackBerry Wireless Device

From: Burr, Sarah (EOIR)
Sent: Wednesday, August 10, 2011 12:29 PM
To: Keller, Mary Beth (EOIR)
Subject: 2 IJC memos from the BIA

I know you are on vacation and I hope you are having a fabulous time. I'm going on vacation soon...

I have had referred to me recently 2 IJC memos from the BIA and I am at a loss as to what, if anything, to do about them.

The first regards Judge (b) (6) and is complaint number 520. This regards an IJ decision, which the Board upheld, with a notation that the respondent alleges that the IJ ridiculed him and he did not receive a fair hearing. However, the decision goes on to note that the respondent points to nothing in the record, and presumably the Board found nothing in the record to substantiate this claim, with the BIA concluding that there is no showing that the hearing was not fairly conducted. (b) (5)

(b) (5)

The second case regards Judge (b) (6), and doesn't have a complaint number yet. I just got it Monday. In this case the BIA reversed a discretionary grant of asylum, agreeing with the government that the particular crimes committed by the respondent should bar asylum as a matter of discretion. The IJ wrote a comprehensive opinion, explaining in detail why (b) (6) granted in the exercise of discretion. (b) (5)

[REDACTED]?

Sarah M. Burr
Assistant Chief Immigration Judge
26 Federal Plaza
New York, N.Y.

4940

EOIR FOIA Processing (EOIR)

From: Keller, Mary Beth (EOIR)
Sent: Friday, August 19, 2011 11:50 AM
To: Burr, Sarah (EOIR)
Subject: RE: 2 IJC memos from the BIA

Hi Sarah,
I've now read the 47 page (b) (6) decision. I agree with you that this is a merits based dismissal. I would change the allegations in the db to "reversal of ijs's 47 page discretionary grant of asylum" just so that we know that. (b) (5)

(b) (5)

mtk

From: Keller, Mary Beth (EOIR)
Sent: Wednesday, August 10, 2011 1:19 PM
To: Burr, Sarah (EOIR)
Subject: Re: 2 IJC memos from the BIA

Sarah
I will take a look nxt week. Meantime, it sounds to me like the (b) (6) complaint may be dismissed as unsubstantiated and (b) (6) complaint may be dismissed as merits based. (b) (5)

(b) (5)

Mtk

Sent from my BlackBerry Wireless Device

From: Burr, Sarah (EOIR)
Sent: Wednesday, August 10, 2011 12:29 PM
To: Keller, Mary Beth (EOIR)
Subject: 2 IJC memos from the BIA

I know you are on vacation and I hope you are having a fabulous time. I'm going on vacation soon...

I have had referred to me recently 2 IJC memos from the BIA and I am at a loss as to what, if anything, to do about them.

The first regards Judge (b) (6) and is complaint number 520. This regards an IJ decision, which the Board upheld, with a notation that the respondent alleges that the IJ ridiculed him and he did not receive a fair hearing. However, the decision goes on to note that the respondent points to nothing in the record, and presumably the Board found nothing in the record to substantiate this claim, with the BIA concluding that there is no showing that the hearing was not fairly conducted. (b) (5)
(b) (5)

The second case regards Judge (b) (6) and doesn't have a complaint number yet. I just got it Monday. In this case the BIA reversed a discretionary grant of asylum, agreeing with the government that the particular crimes committed by the respondent should bar asylum as a matter of discretion. The IJ wrote a comprehensive opinion, explaining in detail why (b) (6) granted in the exercise of discretion. (b) (5)

(b) (5)

15946

Moutinho, Deborah (EOIR)

From: Smith, Gary (EOIR)
Sent: Monday, August 29, 2011 9:44 AM
To: Moutinho, Deborah (EOIR); Keller, Mary Beth (EOIR)
Subject: FW: Status of Open Complaints in the Database

Attachments: Summary of open ACIJ Smith 8-11.pdf; ACIJ Smith detail of open 8-11.pdf

424 and 425 were resolved with a five-day suspension. I understand (b) (6) (IJ (b) (6)) grieved it but I haven't seen that and don't know what has transpired on that. On 455 (IJ (b) (6)), that one is pending with the Deciding Official at Main Justice (David Margolis). On 530, that one on IJ (b) (6) was resolved with a leave restriction which (b) (6) is now under. **Non-Responsive**

Non-Responsive

From: Moutinho, Deborah (EOIR)
Sent: Monday, August 22, 2011 1:06 PM
To: Smith, Gary (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: Status of Open Complaints in the Database

Good Afternoon ACIJ Smith

Per ACIJ Keller's request I am sending you a summary report of all open complaints from your courts currently in the database along with detail report that shows you the specifics concerning each of the open complaints.

After reviewing the reports please let me know if there are any updates and or resolutions to the open complaints – no need to complete a new complaint intake sheet just send me the update along with the corresponding complaint number found on the left hand side of the summary report.

Please let me know if you have any questions or require additional assistance.

Thank you
Deborah

Deborah M. Moutinho

Staff Assistant
Office of the Chief Immigration Judge
Executive Office for Immigration Review

(b) (6)

15951

9/6/2011



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

Office of the Chief Immigration Judge

5107 Leesburg Pike, Suite 2500
Falls Church, Virginia 22041

January 25, 2012

(b) (6)

Re: Complaints concerning Immigration Judges (b) (6) and (b) (6)

Dear (b) (6)

I have received your two letters dated January 18, 2012 regarding denials of your motions for continuance by Immigration Judges (b) (6) and (b) (6). Although I cannot address the merits of those decisions, which would properly be submitted by appeal to the Board of Immigration Appeals, I will carefully consider your complaint and take any further action I may deem necessary.

Thank you for bringing this matter to my attention.

Sincerely,

Deepali Nadkarni
Assistant Chief Immigration Judge

5052

EOIR FOIA Processing (EOIR)

From: Sukkar, Elisa (EOIR)
Sent: Wednesday, January 23, 2013 3:49 PM
To: Moutinho, Deborah (EOIR); Morris, Florencio (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: RE: Immigration Judge Complaint Intake Forms (8)

Importance: High

Good Afternoon Deborah:

We only have 2 complaints currently pending:

- 1) IJ (b) (6) with Complaint No. 709. I am waiting for the IJ to rule on the Motion to Reopen and to respond further to the entire complaint.
- 2) IJ (b) (6) with Complaint No. 694. I am waiting for the IJ to fully respond to the complaint. I sent (b) (6) a follow up request on January 17, 2013.

The other two that you show pending on your report have been closed and were included in the e-mail of the 8 in-take complaint updates:

- 1) IJ (b) (6) with Complaint No. 712 was closed on January 17, 2013 based on oral counseling. The complaint had merit and was substantiated but it is now closed. The IJ received oral counseling.
- 2) IJ (b) (6) with Complaint No. 666 was completed and closed. Please see the third page of the complaint intake form. After the October 22, 2012 entry on the intake form there are two more entries. The correspondence was sent to OCIJ on January 23, 2013 for further review and possible complaint against the OCC in (b) (6). And then on January 17, 2013, the entry in the intake form reflects that the matter is being dismissed as unsubstantiated and that it is closed.

The one on IJ (b) (6) involving respondent (b) (6) which Sabina sent to me on December 14, 2012, was addressed with the judge. This is the case where the respondent claimed he was from Jamaica. He was known to throw food and feces at the (b) (6) guards and was kept in isolation. The BIA affirmed the IJ's decision and all the charges of removability. The matter was not substantiated and therefore dismissed. The complaint is closed as of January 17, 2013. This one was also included in the 8 complaint intake forms that were sent to you. This complaint does not have a number assigned to it.

In summary, at the present time and based upon the records on our end, we only have two complaints pending.

Thank you,

Judge Sukkar

From: Moutinho, Deborah (EOIR)
Sent: Friday, January 18, 2013 11:47 AM
To: Sukkar, Elisa (EOIR); Morris, Florencio (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: RE: Immigration Judge Complaint Intake Forms (8)

6874

Good Morning

Attached is a report of all open complaint that you have in the database right now ACIJ Sukkar, besides the mentioned complaint on IJ (b) (6) which I do not have anything at all on that.

If you have any inputs/closeouts to the open complaints, please just send me an email referencing the judge's name and or the complaint number and I will update the information in the database.

Thank you
Deborah

From: Moutinho, Deborah (EOIR)
Sent: Friday, January 18, 2013 9:27 AM
To: Sukkar, Elisa (EOIR); Morris, Florencio (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: RE: Immigration Judge Complaint Intake Forms (8)

Thank you, I will enter these and send you a report later today. Also I have a Complaint on (b) (6) from a (b) (6) that was sent to you on 12/14 from Sabina -- I check and don't have any updated info on that one.

Thank you
Deborah

From: Sukkar, Elisa (EOIR)
Sent: Thursday, January 17, 2013 6:47 PM
To: Morris, Florencio (EOIR); Moutinho, Deborah (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: RE: Immigration Judge Complaint Intake Forms (8)

☺ ☺ ☺

From: Morris, Florencio (EOIR)
Sent: Thursday, January 17, 2013 6:30 PM
To: Moutinho, Deborah (EOIR)
Cc: Sukkar, Elisa (EOIR)
Subject: Immigration Judge Complaint Intake Forms (8)

Hi Deborah:

Attached please find a total of eight IJ Complaint Intake forms. This includes updates and new intake sheets. Please let us know if there are any others pending.

Thanks,

Florencio (Tony) Morris, Staff Assistant
U.S. Department of Justice
Executive Office for Immigration Review
333 South Miami Avenue, Suite 700
Miami, Florida 33130-1901
305-789-4261
Florencio.Morris@usdoj.gov

6875

Moutinho, Deborah (EOIR)

From: Weisel, Robert (EOIR)
Sent: Tuesday, July 23, 2013 12:42 PM
To: Moutinho, Deborah (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: A#s (b) (6) Judge (b) (6) and (b) (6) Judge (b) (6)

Deborah:

I have concluded both these matters with oral counseling. You may close them. Thanks

Robert D. Weisel
Assistant Chief Immigration Judge
26 Federal Plaza, Room 1237
New York, N.Y. 10278

4039; 16597

(b) (6)

Keller, Mary Beth (EOIR)

From: Keller, Mary Beth (EOIR)
Sent: Tuesday, May 11, 2010 10:57 AM
To: Dean, Larry R. (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: RE: cases that I mentioned

(b)(5) & Non Responsive

From: Dean, Larry R. (EOIR)
Sent: Tuesday, May 11, 2010 10:51 AM
To: Keller, Mary Beth (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: RE: cases that I mentioned

(b)(5) & Non-Responsive

From: Keller, Mary Beth (EOIR)
Sent: Monday, May 10, 2010 12:33 PM
To: Dean, Larry R. (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: FW: cases that I mentioned

Larry,

The cases in red below were not referred to OPR. Thus, I don't have resolutions on them. Nor do I have one on Matter of (b) (6) referred by BIA on 11/17/2009. (b) (6) Not sure what you want to do with those, but take a look and let me know.

Tx.
mtk

From: Dean, Larry R. (EOIR)
Sent: Monday, December 07, 2009 12:49 PM
To: Hatch, Paula (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: cases that I mentioned

Matter of (b) (6), BIA, 9/28/09

BIA indicated that IJ's inappropriate comments raised issue of whether case was decided on considerations that were no part of the record.

IJ indicated newly appointed BIA member is possibly changing the law and that (b) (6) is concerned about being reversed. Also considered that respondent may have future violations of immigration law as providing a basis for denying discretionary relief.

Disciplinary issues: Dereliction of duty by deciding case on matters outside record.

Matter of (b) (6), BIA, 10/31/08

IJ said that (b) (6) could not comply with BIA remand.

7669; 7689; 7723; 7744; 7849; 8100;
8360; 8377; 8402

6/7/2010

BIA indicated that noncompliance was not a possibility.

Disciplinary issues: Dereliction of duty; failure to follow instruction.

Matter of (b) (6), 11/6/08

Comments of I were unnecessarily caustic, sarcastic, or dismissive in tone. Created an appearance of partiality and detracted from dignity of the proceedings.

Disciplinary issue: Injudicious conduct

Matter of (b) (6), 9/21/09

IJ says that (b) (6) is "perplexed" by BIA's earlier decision, yet acknowledges ACIJ's counseling not to criticize the BIA

Disciplinary issue: Failure to follow instruction of superior

Matter of (b) (6), BIA 11/7/08

IJ says that the respondent is "an absolute liar," "would say and do anything to continue illegal presence in the United States," and "wouldn't tell the truth if it would gain him access to the Kingdom of Heaven . . ."

BIA remanded because language showed that IJ might be prejudiced toward respondent

Disciplinary issue: Injudicious conduct

Matter of (b) (6), BIA 9/28/09

Respondent has "feasted on the fruits of benevolence of this nation long enough . . ." "Would not know truth if it reached up and bit him. . ."

Disciplinary issue: Injudicious conduct

Matter of (b) (6), BIA 4/23/09

BIA indicates that IJ's comments are "pejorative remarks directed at the respondent in an *ad hominem* fashion by the Immigration Judge . . ."

IJ said that "[the respondent] is nothing but a taker and his representation that he is [preparing to file back taxes] . . . absolutely insults the intelligence of the court" and that the respondent is "the poster child of [those] who should not be allowed in our nation." (b) (6) said that the respondent was comfortable with how things were, is no longer comfortable, and wants me to make all of that better for him. "My job is not to make up for his negligence and misconduct."

Disciplinary issue: Injudicious conduct by verbal attack on respondent.

Matter of (b) (6), BIA 11/6/09

BIA indicates that IJ impermissibly applied a factor in the case that is not germane to (b) (6) decision, which tainted (b) (6) decision. Added factor was "fear of appellate criticism."

IJ stated, in part, ". . . the current climate effecting IJs who are the subject and target of external criticism . . . is such that I believe the current environment for IJs is such that in order to avoid undue criticism and potential disciplinary action that close calls must be decided in favor of a given respondent . . ." [Then continues with a discussion about another IJ] and then ". . . the current climate within the Department of Justice is such that . . . IJs are hld to a level of scrutiny . . . that I no longer feel I can always adhere to {the required legal} standard" and "[In] a close call, I would deny this case . . . [but based on the current environment] "and to avoid criticism, and I will grant this case."

7670; 7690; 7724; 7745; 7850;
8101; 8361; 8378; 8403a

Disciplinary issue: Dereliction of duty

Matter of (b) (6) BIA, 6/9/09

BIA notes that IJ engaged in "terse exchange" with attorney and does not give respondent an opportunity to present asylum claim.

Disciplinary issue: Dereliction in handling case and injudicious conduct

The hardcopies are being FEDEXed today.

I am also enclosing two counseling statements issued earlier this year which relate to somewhat similar issues. It probably best not to mention those in this action, but it may be helpful for you to note these, except in (b) (6). Re (b) (6) acknowledges a prior counseling regarding commenting about the BIA, yet does so again. Mary Beth's log also reflects some earlier, verbal counseling for similar matters.

LRD

/

7671; 7691; 7725; 7746; 7851;
8102; 8362; 8379; 8403b

6/7/2010

Keller, Mary Beth (EOIR)

From: Keller, Mary Beth (EOIR)
Sent: Tuesday, June 08, 2010 2:08 PM
To: Dean, Larry R. (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: FW: (b) (6) items

Larry,

I am back into Feb 2009 complaints, cleaning some up before I send to you in report form - I have discovered that the (b) (6) (courtroom observer) complaint and the (b) (6) (respondent) complaint about Judge (b) (6) are one and the same, as we would track in our new db. There would simply be two sources. I will address that piece; I don't have a record of resolution though. The nature of the allegations are lack of fairness, due process concerns, and poor treatment in the courtroom - CASE indicates that a bond appeal was dismissed by the BIA on March 27, 2009, and the case appeal was dismissed by the BIA on May 7, 2009. I have not read either case to determine if the BIA addressed was raised with us.

(b) (6) retirement may overtake this, but wanted to forward what I have to you. If you take a look at the cases and determine the complaints were merits based or something else, let us know and we can close out that way.

Tx.,
 mtk

From: Dean, Larry R. (EOIR)
Sent: Monday, November 16, 2009 10:18 AM
To: Keller, Mary Beth (EOIR)
Subject: RE: (b) (6) items

A couple of these may have been handled by counseling statements.

With my visitors, I don't have a lot of time this week, but I'll try to work this in if possible. It's time.

LRD

From: Keller, Mary Beth (EOIR)
Sent: Friday, November 13, 2009 10:24 AM
To: Dean, Larry R. (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: (b) (6) items

Larry,

Per my recent review of all we have relating to Judge (b) (6) below are where I don't think I have updated info. If you would take a look at the current db (attached) items below, and let me know, I will update and send to Brian as we all think about how to proceed:

Matter of (b) (6), BIA Decision from Sept. 2009

Matter of (b) (6) BIA Decision from Sept. 2009

Matter of (b) (6), BIA Decision from Sept. 2009

7692; 7726; 7747; 7852; 8098; 8313; 8363; 8380; 8406

6/10/2010

Matter of (b) (6) BIA Decision from June 2009

Matter of (b) (6) BIA Decision from April 2009

Complaint from (b) (6) from February 2009

Complaint from (b) (6) (the respondent) relating to the proceeding immediately above

Matter of (b) (6) BIA Decision from November 2008.

Matter of (b) (6) BIA Decision from November 2008 (recently discovered, not sent by BIA)

Matter of (b) (6) BIA Decision from October 2008.

Also, I was just advised of another case up at BIA (we don't have a BIA decision yet) but the IJ during the hearing in recounting the bond history states: (b) (6) - hearing in April 2008)

"The only prior proceeding here was a bond hearing/custody redetermination hearing in which the respondent's bond was lowered from \$20,000 to \$2,500 by one of the more popular bond Judges in the country, Judge (b) (6). Folks just love (b) (6). In any event, (b) (6) the Judge and that's what (b) (6) decided.. Good for (b) (6). Anyway, so (b) (6) moved from the detained docket to the non-detained docket."

mtk

MaryBeth Keller
Assistant Chief Immigration Judge
EOIR/OCIJ
703/305-1247
mary.beth.keller@usdoj.gov

7693; 7727; 7748; 7853; 8099; 8314; 8364;
8381; 8407

6/10/2010

(b) (6)

Keller, Mary Beth (EOIR)

From: Sukkar, Elisa (EOIR)
Sent: Thursday, October 07, 2010 6:24 PM
To: Moutinho, Deborah (EOIR)
Cc: Keller, Mary Beth (EOIR); Morris, Florencio (EOIR)
Subject: Closing Out Complaints
Importance: High

Dear Deborah:

This is to let you know that today, October 7, 2010, I sat down with the following IJs and closed out any and all matters pending with them with oral counseling.

Judge (b) (6)

It may be closed already (MTK checked as we were talking today) but as part of (b) (6) PWP, the IJ was counseled about the comments made by an intern from FIAC which the BIA sent to us. (b) (6) provided another statement today. I told (b) (6) the matter is treated as a complaint, the disposition is oral counseling and it is being closed. I then spent a few minutes asking (b) (6) to minimize comments.

Judge (b) (6) (b) (6) A(b) (6) (b) (6)
 complaint)

I indicated to the IJ that OPR does not have a complaint. This does not mean that if they receive a copy of the Motion to Recuse that they may not look into this. As such, OCIJ will proceed with oral counseling. We spent over an 90 minutes with the IJ. The mentor was with me. I went through the transcript with the IJ and explained where the pitfalls may have been. The complaint is that (b) (6) is too prosecutorial and (b) (6) needs to hold back a bit. I asked (b) (6) to spend time in the courtroom alone and think about this. (b) (6) said it has been a learning experience. I went over all the comments I received from AILA and DHS which praise (b) (6) professionalism, (b) (6) knowledge and (b) (6) demeanor. Within the comments from AILA, I do see (b) (6) complaining. I read the comments to the IJ.

Please enter in the database that this was done and close it out. This was part of (b) (6) PWP review as well.

Judge (b) (6) (b) (6) A(b) (6) (b) (6) approach comment)

We went over this matter and conducted PWP review as well. Last time (b) (6) wanted a union rep, this time (b) (6) did not mention it. Told (b) (6) that this is oral counseling and that it will be closed out. We both had the previous two matters but these were discussed on January 25, 2010. Those were "inappropriate tone" (A(b) (6)) and "brusque" comment by the BIA as to IJ's statement (A(b) (6)).

I will conduct PWP review with IJ (b) (6) next week and will go over any and all matters with (b) (6)

Please advise if I owe you guys anything else at this point. Thank you both for your patience!

EMS

2600

10/28/2010

Moutinho, Deborah (EOIR)

From: Keller, Mary Beth (EOIR)
Sent: Monday, October 04, 2010 2:15 PM
To: Sukkar, Elisa (EOIR)
Cc: Moutinho, Deborah (EOIR); Morris, Florencio (EOIR)
Subject: RE: help me please
Great, thank you! Another one down...
And, we rec'd the fax, thanks!
mtk

From: Sukkar, Elisa (EOIR)
Sent: Monday, October 04, 2010 2:14 PM
To: Keller, Mary Beth (EOIR)
Cc: Moutinho, Deborah (EOIR); Morris, Florencio (EOIR)
Subject: FW: help me please
Importance: High

Dear MTK:

The correct date on this one should be April 19, 2010. That is when we looked at it and determined that there was no merit to the complaint because the clock was stopped permanently due to the Respondent's failure to appear at the asylum interview. Therefore, Judge (b) (6) had nothing to do with the fact that the respondent was unable to have employment authorization. The IJ could not even start the clock again.

Please use this date as the closure date. Below you will find the e-mail from Tony to me on this issue. We closed it out here in the field at that time.

Thanks. EMS

PS We just sent the fax to you on the other matter.

From: Morris, Florencio (EOIR)
Sent: Monday, April 19, 2010 1:36 PM
To: Sukkar, Elisa (EOIR)
Subject: RE: help me please

Judge: The Respondent was a no show at the interview therefore, the clock stopped permanently. Tony

2671

10/4/2010

Keller, Mary Beth (EOIR)

From: Burr, Sarah (EOIR)
Sent: Tuesday, December 01, 2009 4:09 PM
To: Keller, Mary Beth (EOIR)
Subject: this and that

Mary Beth, I have reviewed (b) (6) cases and we can discuss whatever you would like to discuss, at your convenience. Also, have you heard anything from OPR on Judge (b) (6) and Judge (b) (6) referrals? Speaking of OPR, have they issued a final report on (b) (6) I'm leaving early today, but you can reach me tomorrow or Thursday at (b) (6). Thanks, Sarah

Sarah M. Burr
Assistant Chief Immigration Judge
26 Federal Plaza
New York, N.Y.

4208

4/30/2010

Moutinho, Deborah (EOIR)

From: Stockton, Bette (EOIR)
Sent: Friday, May 28, 2010 4:05 PM
To: Moutinho, Deborah (EOIR)
Subject: RE: Mary Beth Keller Documents

DM

That is so succinct and exactly what I did. Thank you for your expertise.
Bette S

From: Moutinho, Deborah (EOIR)
Sent: Friday, May 28, 2010 12:16 PM
To: Stockton, Bette (EOIR)
Subject: RE: Mary Beth Keller Documents

Hmmm for #145 we don't have a category for that... How about we close it out with oral counseling... (b) (5) and

From: Stockton, Bette (EOIR)
Sent: Friday, May 28, 2010 3:09 PM
To: Moutinho, Deborah (EOIR)
Subject: RE: Mary Beth Keller Documents

(b) (5) as

Complaint #11 (as you stated is perfect).
Thank you,
Bette S

From: Moutinho, Deborah (EOIR)
Sent: Friday, May 28, 2010 8:44 AM
To: Stockton, Bette (EOIR); Keller, Mary Beth (EOIR)
Subject: RE: Mary Beth Keller Documents

Good Morning Judge Stockton

Here are a few questions I encountered while entering your data:

Complaint # 145 (b) (6), I have the date of 5/27 as the closed date, but what would the reason be -- Complaint Dismissed -- can not be substantiated?? Or something else??

Complaint # 11 (b) (6) was closed out on 5/11 with oral counseling

From: Stockton, Bette (EOIR)
Sent: Thursday, May 27, 2010 8:07 PM
To: Keller, Mary Beth (EOIR); Moutinho, Deborah (EOIR)
Subject: FW: Mary Beth Keller Documents

I am sending the hard copy of these by mail tomorrow. Hope you can read them. I now it is too much info. My usual problem.
Bette S

4216

Moutinho, Deborah (EOIR)

From: Sukkar, Elisa (EOIR)
Sent: Tuesday, June 15, 2010 5:00 PM
To: Keller, Mary Beth (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: RE: (b) (6) update?

MTK and Deborah:

I am going to meet with IJ (b) (6) tomorrow. I have 2 matters that I want to go on record to address with (b) (6). They relate to the format of (b) (6) decisions. (b) (6) apparently just received a BIA decision that (b) (6) wanted to discuss with me. I told (b) (6) that I had a few matters to address with (b) (6). We agreed to meet tomorrow.

I know these do not appear on the latest report that Deborah sent out but I will sit down with IJ nevertheless to close out any loops:

(b) (6) (BIA June 9, 2009) The IJ's decision was in 2002 and was affirmed twice by BIA. But in 2009, they made a comment about (b) (6) format and they vacated the IJ's and their own two previous decisions.

(b) (6) (BIA February 20, 2009). As MTK pointed out, the only issue here was that the BIA found the credibility determination of the IJ to be clearly erroneous. That is a decision the IJ made on the merits and that was (b) (6) determination. Absent any unusual or unnecessary commentary, it is best to close out. I believe it may be closed out already but if it shows pending anywhere please indicate that upon review by the ACIJ, the matter was properly addressed as an appealable issue by the parties and the BIA.

The one I cannot find is the (b) (6) IJC memo. Could you please forward? It seems from MTK's comments that the decision was informal but no criticism by BIA.

It also seems that the IJ received one today saying the decision was "terse". I have not seen that one but will review with IJ tomorrow. All of these cases relate to the format of his decisions, a matter that has been addressed with IJ before.

Will keep you posted. Thanks. EMS

From: Sukkar, Elisa (EOIR)
Sent: Tuesday, June 15, 2010 4:18 PM
To: Sukkar, Elisa (EOIR)
Subject: FW: (b) (6) update?

FYI

From: Keller, Mary Beth (EOIR)
Sent: Tuesday, June 08, 2010 2:35 PM
To: Sukkar, Elisa (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: FW: (b) (6) update?

Elisa,
 Same thing wrt to (b) (6), which also came back in Feb 2009. IJ dec informal, but no criticism by bia.

7869

6/16/2010

I've attached an email between us genlly discussing.
Let me know how you want to "close out."
Tx.
mtk

From: Keller, Mary Beth (EOIR)
Sent: Tuesday, June 08, 2010 2:31 PM
To: Sukkar, Elisa (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: (b) (6) update?

Elisa,
(b) (6) came back from BIA in 2/2009. (b) (6) Adverse cred finding was clearly erroneous.
I don't have a record of resolution. Was this one dismissed as merits based, or?
Tx.
mtk

MaryBeth Keller
Assistant Chief Immigration Judge
EOIR/OCIJ
703/305-1247
mary.beth.keller@usdoj.gov

7870

6/16/2010

Non-Responsive

Non-Responsive

Keller, Mary Beth (EOIR)

From: Dean, Larry R. (EOIR)
Sent: Monday, November 30, 2009 3:34 PM
To: Keller, Mary Beth (EOIR)
Subject: RE: (b) (6) plan

The update that I would like added is that I issued a written counseling on April 13, 2009, re (b) (6) (b) (6) for comments about the respondent which were unnecessarily harsh to the extent that the BIA viewed them as disparaging the respondent and for making disparaging comments about the BIA. I advised that (b) (6) cease making such comments about either. I also issued a written counseling on April 9, 2009, re (b) (6) (b) (6) for unnecessary criticism of the respondent and for criticizing the BIA.

I have also done some verbal counseling but unfortunately cannot retrieve that from any e-mail or other notes. So, that's what I have.

LRD

From: Keller, Mary Beth (EOIR)
Sent: Monday, November 30, 2009 1:49 PM
To: Dean, Larry R. (EOIR)
Subject: RE: (b) (6) plan

Larry,
I am going to need to forward some version of the db to Brian at some point b4 tomorrow at 4, so he can see what's been happening. Do you want me to wait for any updates from you, or, want me to just advise him that we are still in the process of updating? Lemme know.
Tx.
mtk

From: Dean, Larry R. (EOIR)
Sent: Monday, November 30, 2009 2:17 PM
To: O'Leary, Brian (EOIR); Keller, Mary Beth (EOIR)
Subject: RE: (b) (6) plan

That also works for me.

From: O'Leary, Brian (EOIR)
Sent: Monday, November 30, 2009 11:41 AM
To: Keller, Mary Beth (EOIR); Dean, Larry R. (EOIR)
Subject: RE: (b) (6) plan

We have the SFMS meeting at 2 and the personnel meeting at 3 tomorrow. How about 4?

From: Keller, Mary Beth (EOIR)
Sent: Monday, November 30, 2009 12:27 PM
To: Dean, Larry R. (EOIR)
Cc: O'Leary, Brian (EOIR)
Subject: RE: (b) (6) plan

I am available all day tomorrow, so either of those times works for me-

8156

12/1/2009

EOIR FOIA Processing (EOIR)

From: Hatch, Paula (EOIR)
Sent: Monday, June 21, 2010 12:12 PM
To: Dean, Larry R. (EOIR); Keller, Mary Beth (EOIR); Rosenblum, Jeff (EOIR)
Cc: Reinfurt, Sandy (EOIR)
Subject: RE: (b) (6) proposed suspension

Thank you.

From: Dean, Larry R. (EOIR)
Sent: Monday, June 21, 2010 12:12 PM
To: Hatch, Paula (EOIR); Keller, Mary Beth (EOIR); Rosenblum, Jeff (EOIR)
Cc: Reinfurt, Sandy (EOIR)
Subject: RE: (b) (6) proposed suspension

(b) (6)

From: Hatch, Paula (EOIR)
Sent: Monday, June 21, 2010 10:29 AM
To: Dean, Larry R. (EOIR); Keller, Mary Beth (EOIR); Rosenblum, Jeff (EOIR)
Cc: Reinfurt, Sandy (EOIR)
Subject: RE: (b) (6) proposed suspension

Judge Dean:

Could you please provide me the A number that coincides with the (b) (6) complaint? Thanks, Paula

From: Dean, Larry R. (EOIR)
Sent: Friday, June 18, 2010 9:39 AM
To: Dean, Larry R. (EOIR); Keller, Mary Beth (EOIR); Hatch, Paula (EOIR); Rosenblum, Jeff (EOIR)
Subject: RE: (b) (6) proposed suspension

(b) (5)

LRD

From: Dean, Larry R. (EOIR)
Sent: Friday, June 18, 2010 7:55 AM
To: Keller, Mary Beth (EOIR); Hatch, Paula (EOIR); Rosenblum, Jeff (EOIR)
Subject: RE: (b) (6) proposed suspension

(b) (5)

LRD

From: Keller, Mary Beth (EOIR)
Sent: Thursday, June 17, 2010 4:27 PM
To: Hatch, Paula (EOIR); Rosenblum, Jeff (EOIR)

8286

EOIR FOIA Processing (EOIR)

From: Weisel, Robert (EOIR)
Sent: Tuesday, January 10, 2012 9:01 AM
To: Keller, Mary Beth (EOIR)
Subject: FW: Open Complaints in the IJ Conduct Database

This is what I sent to Deborah, regarding (b) (6) and (b) (6). Considering your e mail, I need to find out when Sarah counseled them.
Bob

Robert D. Weisel
Assistant Chief Immigration Judge
26 Federal Plaza- Suite 1237
NY, NY 10278

From: Weisel, Robert (EOIR)
Sent: Friday, January 06, 2012 12:03 PM
To: Moutinho, Deborah (EOIR)
Subject: RE: Open Complaints in the IJ Conduct Database

I will be faxing you an IJ complaint intake form for Judge (b) (6). We can close this out as per discussion with Mary Beth. The correct event for closure in this case is complaint dismissed. Because it was disproven. Regarding complaint 553(b) (6) and 554(b) (6), you can close these out as well with the event for both being ,oral counseling.

Robert D. Weisel
Assistant Chief Immigration Judge
26 Federal Plaza- Suite 1237
NY, NY 10278

From: Moutinho, Deborah (EOIR)
Sent: Thursday, January 05, 2012 8:35 AM
To: Weisel, Robert (EOIR)
Subject: RE: Open Complaints in the IJ Conduct Database

Perfect!!! Thanks
Deborah

From: Weisel, Robert (EOIR)
Sent: Wednesday, January 04, 2012 4:48 PM
To: Moutinho, Deborah (EOIR)
Subject: RE: Open Complaints in the IJ Conduct Database

Regarding complaint #590(b) (6)
This complaint was closed today, January 4, 2012. Corrective action was already taken – an intervening event.

Robert D. Weisel
Assistant Chief Immigration Judge
26 Federal Plaza- Suite 1237
NY, NY 10278

From: Moutinho, Deborah (EOIR)
Sent: Wednesday, January 04, 2012 4:02 PM
To: Weisel, Robert (EOIR)

9221

EOIR FOIA Processing (EOIR)

From: Dean, Larry R. (EOIR)
Sent: Tuesday, November 13, 2012 2:55 PM
To: Keller, Mary Beth (EOIR)
Subject: RE: BIA Decisions of the last 6 months

I prefer to leave it open and note that performance counseling occurred on 10/31/2012. I would like to have the BIA decision before going further. Does that work?

LRD

From: Keller, Mary Beth (EOIR)
Sent: Tuesday, November 13, 2012 1:05 PM
To: Dean, Larry R. (EOIR)
Subject: RE: BIA Decisions of the last 6 months

Hey Larry,
All I actually needed was (b) (6) if I follow you, you actually addressed it with performance counseling, then we can close it that way, either counseling, or, corrective action already taken (that would be the performance counseling). We'd just need the date. Or, we can leave it open per your comments below.
Let me know -
Thanks.
Mtk

From: Dean, Larry R. (EOIR)
Sent: Tuesday, November 13, 2012 1:55 PM
To: Keller, Mary Beth (EOIR)
Subject: RE: BIA Decisions of the last 6 months

Regarding:

1. (b) (6)

Also, raised at the same time were: (b) (6), (b) (6) and (b) (6) 3

I concluded that the last three ((b) (6)) raised legal issues, not conduct or performance issues, and did not take action regarding those.

Regarding (b) (6) based on my examination and after receiving Paul's input, I decided that DHS's conduct, though probably not deliberate, created an appearance that prevented me from taking any further action against the IJ. The IJ and I had some exchanges of e-mails, and I considered the matter closed when (b) (6) apologized for what (b) (6) said to the CA regarding the CA's involvement.

2. (b) (6)

Issued written counseling on 8/21/12 for intemperate conduct in hearing

3. (b) (6)

9365; 9405

Issued written counseling on 8/27/12 for conducting contentious hearing

4. (b) (6)

I have not taken final action in this case. I did, however, consider this as a performance issue when writing UJ (b) (6) progress review, regarding conducting contentious hearings. If it is acceptable, I would like to leave this matter open regarding conduct. The case has been appealed, and I believe the BIA will address this further. OK?

Have I addressed the ones that are open at this time, or are there others that I need to update?

LRD

From: Keller, Mary Beth (EOIR)
Sent: Tuesday, November 13, 2012 8:51 AM
To: Dean, Larry R. (EOIR)
Subject: RE: BIA Decisions of the last 6 months

LRD –
IF you are feeling any better and can confirm this today, I will take it off the “open” list for the yearly stats.
Tx.
mtk

From: Dean, Larry R. (EOIR)
Sent: Thursday, November 08, 2012 9:06 AM
To: Keller, Mary Beth (EOIR)
Subject: RE: BIA Decisions of the last 6 months

Mary Beth,

It may be early next week before I close the loop on this. Non-Responsive
Non-Responsive

LRD

From: Keller, Mary Beth (EOIR)
Sent: Wednesday, November 07, 2012 11:48 AM
To: Dean, Larry R. (EOIR)
Subject: FW: BIA Decisions of the last 6 months

Larry,

Trying to parse out what you did with one complaint regarding Judge (b) (6) – number 648 in the db, and was the one involving #871 from att(b) (6). I think that was the one that prompted our 6 month review of (b) (6) cases by Paul, which didn't turn much up (see below) and per your July 24 email (below) you were inclined to counsel. In your Aug 27 email it sounds like you may have in fact counseled (b) (6) as one of the “two other matters.” Did you, and if so, what date? If not, we need another disposition.

I know that (b) (6) had several matters swirling at the same time, but I think this is the last one that remains of that group that we need clarification on.

Thanks!

Mtk

From: Dean, Larry R. (EOIR)
Sent: Tuesday, August 28, 2012 9:56 AM
To: Keller, Mary Beth (EOIR)
Subject: RE: BIA Decisions of the last 6 months

(b) (5)

LRD

From: Keller, Mary Beth (EOIR)
Sent: Monday, August 27, 2012 3:05 PM
To: Dean, Larry R. (EOIR)
Subject: RE: BIA Decisions of the last 6 months

(b) (5)

Mtk

From: Dean, Larry R. (EOIR)
Sent: Monday, August 27, 2012 3:24 PM
To: Keller, Mary Beth (EOIR)
Subject: RE: BIA Decisions of the last 6 months

(b) (5)

LRD.

From: Keller, Mary Beth (EOIR)
Sent: Tuesday, August 21, 2012 3:52 PM
To: Dean, Larry R. (EOIR)
Subject: RE: BIA Decisions of the last 6 months

Larry,

9367; 9407

Just checking in on this --- and the one attached.

I did in fact just listen to (b) (6) and, have to say that in the part where the judge is most irritated, I kind of have to agree that that whole scene with the mentally challenged respondent being moved by DHS is problematic. However, in the later hearings, the judge remains a little too deliberate, sanguine, and condescending, putting emphasis on certain words for effect, and almost mocking of the respondent's mother..."Perhaps your love wasn't enough..."

I know that the judge also just got another decision back from BIA last week.

(b) (5)

Mtk

From: Dean, Larry R. (EOIR)
Sent: Tuesday, July 24, 2012 12:42 PM
To: Keller, Mary Beth (EOIR); Monsky, Paul (EOIR)
Subject: RE: BIA Decisions of the last 6 months

I'm inclined in that same direction, based on the couple of things that I have.

LRD

From: Keller, Mary Beth (EOIR)
Sent: Tuesday, July 24, 2012 11:27 AM
To: Dean, Larry R. (EOIR); Monsky, Paul (EOIR)
Subject: RE: BIA Decisions of the last 6 months

Larry,
This sounds like "good news" -- At least up to this point. Short of looking further into Judge (b) (6) hearings via auditory review of DAR, which I'm not sure is warranted yet, I think counseling on the item of concern makes sense. Thoughts?
mtk

From: Dean, Larry R. (EOIR)
Sent: Tuesday, July 24, 2012 10:32 AM
To: Monsky, Paul (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: RE: BIA Decisions of the last 6 months

Paul,

Thanks for the help and the report back.

LRD

From: Monsky, Paul (EOIR)
Sent: Tuesday, July 24, 2012 9:30 AM
To: Dean, Larry R. (EOIR)

9368; 9408

Cc: Keller, Mary Beth (EOIR)

Subject: RE: BIA Decisions of the last 6 months

Hi, Judge Dean,

I've looked through all the Board decisions in matters that have been returned Judge (b) (6) over the last year (remands, BCR, and sustained appeals). There weren't a substantial number of appeals overall, and the percentage of remands is not alarming. None of the BIA decisions expresses a problem with Judge (b) (6) demeanor or tone. In one instance, the subtext of the Board decision on appeal from the denial of reopening an in absentia case based on IAC is that Judge (b) (6) was too rigid in requiring counsel's compliance with rules. IJ conduct isn't even tangentially related to the reasons for the other remands on the face of those decisions, which are typical remands based on differing opinions regarding burden of proof where (b) (6) decision may have been upheld had another panel reviewed the matter.

Paul

From: Keller, Mary Beth (EOIR)

Sent: Thursday, July 12, 2012 2:27 PM

To: Monsky, Paul (EOIR)

Subject: BIA Decisions of the last 6 months

Paul,

I spoke w/ Judge Dean, and, his request was simply that you review all the BIA decisions that have come out in the last six months relating to Judge (b) (6) to see if there is anything in there of concern.

Shouldn't be a lot there, but, presumably a few.

Let me know if you have a problem getting those from the VLL –

Mtk

9369; 9409

EOIR FOIA Processing (EOIR)

From: Fong, Thomas (EOIR)
Sent: Friday, March 05, 2010 10:11 AM
To: Moutinho, Deborah (EOIR)
Cc: Keller, Mary Beth (EOIR); Weil, Jack (EOIR)
Subject: FW: On Line Training Today

FYI in regard to the Anger Management Training taken on-line by UJ (b) (6) and UJ (b) (6)

Thomas Y.K. Fong
Assistant Chief Immigration Judge
Immigration Court/EOIR/DOJ
606 South Olive Street, 15th Floor
Los Angeles, CA 90014
(213)894-3906 (b) (6)
(b) (6)

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

From: Fong, Thomas (EOIR)
Sent: Friday, March 05, 2010 7:09 AM
To: (b) (6) (EOIR); (b) (6) (EOIR)
Subject: RE: On Line Training Today

Good, (b) (6) noted the same and ran me off a copy of the materials although the verbal "fill in" as (b) (6) noted was not included. Tom

Thomas Y.K. Fong
Assistant Chief Immigration Judge
Immigration Court/EOIR/DOJ
606 South Olive Street, 15th Floor
Los Angeles, CA 90014
(213)894-3906 (b) (6)
(b) (6)

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

From: (b) (6) (EOIR)
Sent: Thursday, March 04, 2010 2:53 PM
To: Fong, Thomas (EOIR); (b) (6) (EOIR)
Subject: RE: On Line Training Today

It was helpful.

Thank You!

(b) (6)

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

From: Fong, Thomas (EOIR)
Sent: Thursday, March 04, 2010 11:49 AM
To: (b) (6) (EOIR); (b) (6) (EOIR)

10517

6. COMPLAINT CLOSED

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

From: Fong, Thomas (EOIR)
Sent: Thursday, December 31, 2009 10:28 AM
To: (b) (6) (EOIR)
Subject: Preparation for your PWP with me on Jan 6
Importance: High

(b) (6) As noted earlier in our conversation of 12/23/09 we will discuss

A) The Letter of concern from (b) (6) on the (b) (6) and your drafted proposed response.

But also, please review so we can discuss the following cases,

B) Concerns raised by DHS about IJ conduct and actions in court on cases heard & reset by you on December 2, 2009:

- 1) A (b) (6)
- 2) A (b) (6)
- 3) A (b) (6)
- 4) A (b) (6)
- 5) A (b) (6)
- 6) A (b) (6)
- 7) A (b) (6)

C) BIA remands dated cases and reason(s) remanded:

- 1) A (b) (6) (05/14/09)
- 2) A (b) (6) (10/01/09)
- 3) A (b) (6)
- 4) A (b) (6)
- 5) A (b) (6)
- 6) A (b) (6)
- 7) A (b) (6)
- 8) A (b) (6)

D) Complaints and/or informal requests to review by private counsels on:

- 1) A (b) (6) Motion to Recuse
- 2) A (b) (6) Motion to Recuse
- 3) A not given? - (b) (6) Motion to Recuse

E) Other concerns noted in observing IJ (b) (6) in court:

- 1) A (b) (6) IJ Conduct in court
- 2) A (b) (6) Addressing a Motion to Recuse properly

Thomas Y.K. Fong
Assistant Chief Immigration Judge
Immigration Court/EOIR/DOJ
606 South Olive Street, 15th Floor
Los Angeles, CA 90014
(213)894-3906 (b) (6)

(b) (6)

10520

EOIR FOIA Processing (EOIR)

From: Stockton, Bette (EOIR)
Sent: Thursday, May 05, 2011 8:15 PM
To: Keller, Mary Beth (EOIR)
Subject: RE: IJC Memo - Matter of (b) (6) (April 25, 2011)
Attachments: BIA Complaint re Judge (b) (6) 4-5-11 A(b) (6) doc

Hi Mary Beth,
You won't believe what I found – a copy of my intake form and the action taken with Judge (b) (6) I will attach a copy and I have brought it up to date because after (b) (6) got my written memo we talked about the complaint personally. The one I have not completed yet is the most recent one I received from the BIA on Judge (b) (6) which I will get to you "pronto".

Bette

From: Keller, Mary Beth (EOIR)
Sent: Thursday, May 05, 2011 8:34 AM
To: Stockton, Bette (EOIR)
Subject: RE: IJC Memo - Matter of (b) (6) (April 25, 2011)

Well, pobody's nerfect! ☺
My tongue has bite marks in a million spots!

From: Stockton, Bette (EOIR)
Sent: Thursday, May 05, 2011 10:52 AM
To: Keller, Mary Beth (EOIR)
Subject: RE: IJC Memo - Matter of (b) (6) (April 25, 2011)

Yes, I have written to and spoken with Judge (b) (6) but I inadvertently failed to fill out the intake form. I will do so some time today with my follow up info. (b) (6) was chagrined that said that it has made (b) (6) bit (b) (6) tongue on several occasions since then. Non-Responsive

Bette

From: Keller, Mary Beth (EOIR)
Sent: Thursday, May 05, 2011 7:47 AM
To: Moutinho, Deborah (EOIR); Stockton, Bette (EOIR)
Subject: RE: IJC Memo - Matter of (b) (6) (April 25, 2011)

Good morning Bette,
Any update on this one? I don't think we have an intake form on this yet.
Tx.
mtk

From: Moutinho, Deborah (EOIR)
Sent: Tuesday, April 05, 2011 2:29 PM
To: Stockton, Bette (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: RE: IJC Memo - Matter of (b) (6) (April 25, 2011)

11742

(b) (6)

Moutinho, Deborah (EOIR)

From: Sukkar, Elisa (EOIR)
Sent: Tuesday, November 17, 2009 7:48 PM
To: Keller, Mary Beth (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: RE: (b) (6) - old complaint

Dear MTK:

I have reviewed my files and this is what I have.

Atty (b) (6) wrote to former CIJ David Neal on October 1, 2008 requesting that the IJ be removed from her cases. The attorney filed several motions asking for the IJ to recuse (b) (6) based upon past professional dealings. The IJ denied the motions and the attorney filed 11 interlocutory appeals. The BIA dismissed them. I am pleased to report, based upon my conversations with the CA and the IJ, that the attorney no longer asks for the IJ to recuse (b) (6).

During this time period, and while all of this was going on, we received the anonymous complaint. I addressed it with the IJ the same day I received it which was on October 31, 2008. (b) (6) indicated that (b) (6) daughter comes in to the office after she walks from school so that she can be given a ride by the IJ to swimming lessons. After (b) (6) drops (b) (6) daughter at her classes, the IJ comes back to the office and works until 7:00 or 8:00 pm. (b) (6) indicated (b) (6) does not leave early but that (b) (6) did leave around 4:45 pm and was absent for about 15 minutes and comes back in to work. Whoever filed the complaint, apparently saw (b) (6) leaving but not returning back to the office to put in additional hours. But this practice is no longer occurring as the IJ (b) (6) said it will not happen anymore and (b) (6) would make other arrangements for (b) (6) daughter.

The second aspect of this anonymous complaint was also addressed. It dealt with the timing of when (b) (6) conducted the bond hearings for cases in which there was also a removal hearing occurring. (b) (6) was doing the removal hearings in the morning and the bond hearings in the afternoon causing attorneys to have two different hearings on the same day for the same alien. (b) (6) was told not to set different times and instead to address the removal and the bond hearings back to back and during the same time slot.

Non-Responsive

I have not received any other complaints for this IJ. (b) (6) works hard and is doing very well.

In summary, all complaints and comments have been addressed with the IJ.

Please advise if you need anything else. Thanks. EMS

From: Keller, Mary Beth (EOIR)
Sent: Friday, November 13, 2009 4:23 PM
To: Sukkar, Elisa (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: RE: (b) (6) - old complaint

Non-Responsive

mtk

From: Keller, Mary Beth (EOIR)

11/18/2009

12652

Sent: Friday, November 13, 2009 4:13 PM

To: Sukkar, Elisa (EOIR)

Cc: Moutinho, Deborah (EOIR)

Subject: (b) (6) - old complaint

Elisa,

Trying to catch up w/ a year's worth of unattended matters in terms of update... Judge (b) (6) had two complaints, one of which you determined the atty exhibited misconduct and not the ij, that was (b) (6). There was another one, anonymous, but alleging that the judge was picking up (b) (6) daughter on work time, and some scheduling /calendar issues etc. I think I recall that you were going to discuss the assertions with (b) (6). Whatever came of that one? If you would let me know, I will update the db and close this out. I know the judge is still in (b) (6) so want to make sure I have everything closed out properly.

Tx.

mtk

MaryBeth Keller

Assistant Chief Immigration Judge

EOIR/OCIJ

703/305-1247

mary.beth.keller@usdoj.gov

12653

11/18/2009

closed.

From: Smith, Gary (EOIR)
Sent: Tuesday, May 11, 2010 5:02 PM
To: (b) (6) (EOIR); (b) (6) (EOIR)
Subject: FW: judge (b) (6)

Judge (b) (6) We're going to need to come up with a very objective response to (b) (6) complaint. Please review this and let's begin working on it. Thanks. (I recognize that she has been problematic there and will likely continue to be.)

From: Keller, Mary Beth (EOIR)
Sent: Tuesday, May 11, 2010 4:33 PM
To: Smith, Gary (EOIR)
Subject: FW: judge (b) (6)

Gary,

Here is what I initially got. Then I spoke with her on May 03 on the phone. She reiterated most of what was in the (b) (6) and added a few other things. She claims problems with respondents getting into the (b) (6) facility following their release; and problems with respondents getting copies of the 213s in their own records from either DHS or the judge.

I have also attached an email she sent me following our phone conversation relating to (b) (6)

I think the substance of what she is asserting that we may want to get the judge to respond to are

(1) improperly closing hearings? (b) (5)

(b) (5)

(2) IJ ordering the guards to have her removed from the building? (b) (5)

(b) (5)

(3) Failure to record hearings. (b) (5)

(b) (5)

(4) Stated policy of categorically denying bond unless there are ten years of income tax records in evidence. (b) (5)

(b) (5)

mtk

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

From: (b) (6) [mailto:(b) (6)]
Sent: Thursday, April 29, 2010 12:43 AM
To: Keller, Mary Beth (EOIR)
Subject: RE: judge (b) (6)

Dear Ms. Keller,

Thanks for your follow up explanation. I was hoping to talk with you to have an understanding of the process I should be expecting, including a

12834

5/12/2010



U.S. Department of Justice
Executive Office for Immigration Review
Office of the Chief Immigration Judge
5107 Leesburg Pike, Suite 2500
Falls Church, Virginia 22041

Chief Immigration Judge

MEMORANDUM

TO: Kevin A. Ohlson
Director

FROM: 
David L. Neal
Chief Immigration Judge

DATE: September 23, 2008

SUBJECT: Trial period evaluation for Judge (b) (6)

Judge (b) (6) is scheduled to complete (b) (6) trial period on December 23, 2008. Because there are unusual elements in (b) (6) evaluation, this memorandum sets out specific items for your consideration.

Non-Responsive

Non-Responsive

Non-Responsive (There was one item of anonymous criticism that (b) (6) is not sensitive to political asylum cases rooted in domestic violence.) Non-Responsive

Non-Responsive

Complaints. Judge (b) (6) has been the subject of two formal complaints during (b) (6) probationary period. The first complaint involved an oral decision in which (b) (6) cited a website that was not cited by either party or otherwise referenced in the record. The second complaint involved the improper pretermission of an asylum application and a failure to give a pro se respondent proper advisals with respect to voluntary departure. Neither complaint warranted discipline, but Judge (b) (6) was counseled accordingly in both instances.

13540

Moutinho, Deborah (EOIR)

From: Smith, Gary (EOIR)
Sent: Wednesday, June 02, 2010 5:20 PM
To: Keller, Mary Beth (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: FW: IJC Memo - Matter of (b) (6) (BIA September 30, 2009)
Attachments: (b) (6) - Remand to Another Immigration Judge.pdf; Fwd IJ ComplaintFrom (b) (6) and (b) (6) (4).htm; FW IJC Memo - Matter of (b) (6) (BIA September 30 2009).htm; (b) (6) pdf; (b) (6) pdf

This pertains to **Complaint Number 157** (Matter of (b) (6)) and **Complaint Number 89** (three matters raised by (b) (6)).

First, in regard to **Complaint Number 157**, I obtained the complete transcript of the original hearing (91 pages) and read it, I reviewed and printed out the pages from the CASE database regarding the case, read the (b) (6) Circuit decision, and sent the complete referral packet to Judge (b) (6) and gave (b) (6) a date by which to respond back to me. I am convinced that (b) (6) took this seriously and introspectively looked at (b) (6) own handling of the case. (b) (6) recognized the Court's criticism of (b) (6) as "prosecutorial" and that (b) (6) decision could have been much better. From my reading of the transcript (b) (6) did give the respondent and his counsel a full opportunity to present their case. In sum, I believe that (b) (6) recognizes the issues raised by the Circuit Court and that no further action on this is required. I think this would likely fit in the "Other" block.

Second, in regard to **Complaint Number 89**, (b) (6) complaints, his first complaint pertained to a case that was in the process of appeal to the BIA. On October 5, 2009 I reviewed that case in our database and was convinced that it would be inappropriate to intercede in that process. The BIA issued its decision (fourth attachment) and did not conclude that Judge (b) (6) was biased during the proceedings and dismissed the appeal. That aspect of his complaint was merits based. His second complaint was that (b) (6) had not given adequate attention to a motion to reopen that he had filed. The BIA had at the time of his complaint already decided that issue and dismissed the appeal (fifth attachment). Judge (b) (6) also addressed this in (b) (6) response and I am convinced this complaint is unsubstantiated and decided so on October 30, 2009. The third complaint pertained to an adjustment of status application. I directed the case be set back in earlier and it was completed on September 11, 2009. Judge (b) (6) also addressed this in (b) (6) response. (b) (6) raised the issue of the contentiousness between Judge (b) (6) and (b) (6). I have addressed that before with the Chief Counsel and the Chief Counsel removed (b) (6) from courtroom duties for six months because he was causing issues in cases. I believe that the three issues (b) (6) raised were all addressed—the first and second were decided by the BIA and the third case was moved up to an earlier date and completed. Judge (b) (6) is well aware from the Board referral and the complaint I referred to (b) (6) to address that (b) (6) conduct is carefully scrutinized.

Unless you see something further that needs to be done, I believe both complaints have been resolved.

From: Smith, Gary (EOIR)
Sent: Friday, October 30, 2009 11:10 AM
To: (b) (6) (EOIR)
Subject: RE: IJC Memo - Matter of (b) (6) (BIA September 30, 2009)

Judge (b) (6) Thank you for carefully reviewing these. I will go over what you have submitted.

From: (b) (6) (EOIR)
Sent: Thursday, October 29, 2009 8:45 PM
To: Smith, Gary (EOIR)
Subject: RE: IJC Memo - Matter of (b) (6) (BIA September 30, 2009)

14726; 14830

6/4/2010

Dear Judge Smith:

Thank you for allowing me to comment and for the extension.

After reviewing the subject through the ROP which included transcript, tapes, and evidence, it remains unclear to me the meaning of the (b) (6) Circuit's conclusion that my inquiry was prosecutorial and inquisitorial and, therefore, led to a faulty credibility finding, in light of me giving Respondent's counsel a full opportunity to conduct his direct examination, and even offering to keep the record open at the end of the hearing for more evidence -- specifically on the nature of the scars, which could have been supported through medical examination. .

The hearing began almost an hour late; it was in the afternoon after a 45-case morning master, and there was not just the issue of persecution, but the issues of Respondent's identity, and the timeliness of his filing -- not shown in the ROP documents (no passport, no birth certificate), and not shown after the sole testimony of Respondent presented at the hearing. With this backdrop, and an unfamiliar Respondent counsel (only time in my six years that he has appeared before me), I can only surmise that for the sake of expediency I began the questioning which would also let parties know where the gaps in the evidence lie.

However, after my inquiry, Respondent counsel was always given the opportunity to question Respondent further, usually expressly by the Court. And at the conclusion of the hearing, I stated that the record would be closed unless there was additional evidence to be offered -- a statement made after I had discussed with Respondent counsel the need for medical documentation to show that Respondent's head scars were not inconsistent with the manner in which he claimed that they had been inflicted -- by sticks or tree branches; and for rebuttal of DHS evidence which disputed Respondent's claim about the time of his arrival in the US by cargo ship. Respondent counsel declined and decided to rest on the record.

The governing regulations expressly allow the IJ to "receive and *adduce* material and relevant evidence." 8 C.F.R. 1240.33 (b) (2005), 1240.32 (b) (2008). Respondent's head scars were demonstrative evidence, relevant and material to his claim of a persecutory beating, which could have influenced a favorable outcome if accompanied by medical documentation showing the scarring was consistent with cuts from tree branches or wood sticks from trees, as Respondent had described the weapons. I disagree with the (b) (6) Circuit finding that I focused too much on the head wounds and scarring --to the contrary it was the best evidence that Respondent put forth, in light of the absence of reliable identity documents showing his relationship to alleged family members forming the basis for social group based persecution. My continued questioning was to illicit some detail to support his case as opposed to undermine his credibility as found by the (b) (6) Circuit (p.5); for I could have just left the lack of evidence as it was and found that Respondent did not corroborate his claim. From the transcript, it appears that Respondent, without much detail, described a serious wound, but his head showed faint signs of scarring.

Since it is possible that tree branch cuts to the head may leave a particular type scarring, especially if there were no stitches, an adequate detailing by Respondent of his medical treatment was material, because Respondent had provided no expert medical documentation and apparently did not intend to offer such. This is where I was going with my inquiry on Respondent's head wounds and the treatment. The (b) (6) Circuit discourse on the scarring, I believe, lends support to the proper focus of my inquiry, when it engages in speculation about head wounds not being a fleshy part of the body. (fn 1, p.5) and that stitches are not always appropriate. The resolution of these issues were best left for a medical expert, but absent such documentation, it was appropriate for the Court to attempt to elicit such details from Respondent about his wounds the treatment when he showed a resultant scar on his head. Contrary to the (b) (6) Circuit's decision, the availability of medical treatment in Africa, was not an issue at

14727; 14831

6/4/2010

the hearing. An issue was whether Respondent's wounds were stitched or not since "very deep" wounds, not stitched and allowed to heal over a two month period while bandaged would likely heal differently and have a different looking and textured scar as opposed to stitched wounds. Thus, the contrast between Respondent's description of his wounds, albeit not very detailed, and the size and prominence of the scarring (two years old at the time of the hearing), would properly be a basis for a credibility finding—that is where the Court was going with its inquiry.

From my assessment of the ROP and tapes, whereby Respondent Counsel, was given a full and fair opportunity to examine his client, and to present additional evidence, after having the benefit of the Court's expressed concerns about the issues, I see no basis for the (b) (6) Circuit characterization of my manner as "prosecutorial," in content or in tone; and no basis for finding that my "inquisitorial inquiry" was for the purpose of undermining Respondent's credibility.

Admittedly, it was technically, not the best decision that I have rendered, as there was no applicable law section, perhaps omitted in error, or in the rush of trying to meet completion goals. One might also dispute my reliance on lack of credibility as opposed to lack of corroboration to deny the claim since this matter was pre-REAL ID. However, the case law on which I relied was cited, and appropriate.

Regarding the complaint by (b) (6) forwarded by AILA representatives (b) (6) and (b) (6) there was only one ROP available to review (b) (6). Both cases about which he specifically complained have been completed: the 672 page Motion to Reconsider (b) (6) filed 01/06/09 was completed on (b) (6) 09 at approximately 10:00 pm, because I was on leave the next day (my birthday). I believe that I stayed so late to complete it (despite being "lazy") because I may have had some word perfect problems and lost a draft (not certain if this was the case – but it happened); had a full docket that day; and the deadline was approaching or may have expired, but not by many days. I reviewed the submissions, relevant portions on country background, focusing on dates of the articles and events, and those portions relating to the alleged social group, and the general populace, whether highlighted or not; and of course counsels' briefs. I made a decision which was apparently sent out the following day.

Regarding (b) (6) it was timely handled with an order issued on 9/11/09, after receipt of DHS' non opposition. Despite representations by (b) (6) that DHS did not oppose, DHS did not respond until 9/03/09 with its non opposition letter. This matter had been a source of contention with (b) (6) at an earlier master on 10/06/08, so it was particularly important that DHS's agreement to the grant be in writing; my worksheet notes indicated that a joint motion would be filed. There is no evidence that (b) (6) ever requested a joint motion, but instead proceeded to phone (b) (6) legal tech, almost daily, starting a few days after filing the motion, inquiring if the judge signed the order. (b) (6) unnecessarily escalated this matter to headquarters, even though DHS had not yet responded.

(b) (6) is further disingenuous when he ties the continuation of his client's matter with the Court's termination of a master calendar on that day (if it even occurred on that day) because (b) (6) usual combative conduct would not abate and DHS stated that they had no replacement. (b) (6) case was already finished when I aborted the rest of the morning master; his case was continued solely because DHS was to lodge a charge; and it is unlikely that he remained in the courtroom.

It is interesting how (b) (6) minimized the level of disruption that day (which occurred even during his case) by describing the impasse as "the judge not feel[ing] like going forward with (b) (6) in the Courtroom, [which] happened on many other occasions." (b) (6) may not have thought much of the conflict because of the level of drama that he engaged as a TA.

14728; 14832

Actually (b) (6), as a TA, was often as disruptive and unprofessional as (b) (6). His manner always turned angrily disrespectful when the Court ruled against him – even coming out of his seat and flailing his arms. At masters, he attempted to always take charge, beginning a colloquy before I even had a chance to sit down, speaking over me, instructing me what I needed to do before I had a chance to open the ROP, always challenging me.. His disrespect was so apparent that on an occasion, a woman from the courtroom approached him while he was seated at counsel's table, and interrupted one of his performances with a note she had scribbled, stating that he must respect the lady judge.

Now it appears to me from these unsubstantiated personal attacks on me, that Mr. Murphy may not just be (b) (6) too – depicting me as lazy several times in his complaint. His description of my court as a “mystery court”, I assume to be (b) (6) attempt at some humor, but appears to refer to my protracted nearly (b) (6) month absence in (b) (6); and then part time until about October because of (b) (6). I was on approved sick leave and I believe on that, you have the particulars.

(b) (6) accusation that I “belittle[]” parties, I assume refers to making a judgment and giving directions on the presentation of a case if it is inadequate. Brief continuances for preparation of a decision are routine; and if a party will be unavailable, I will accommodate them by rescheduling, allowing telephonic appearances; or for them to come and listen to a taped decision. So I'm unclear to what (b) (6) is referring when he accuses me of making parties return in the evening after a morning hearing. And while I have been here until as late as 8pm to do a decision after a hearing which may have ended around 6pm, it is only when all parties consent; and this is rare, contrary to (b) (6). (b) (6) accusation that it happens frequently. In fact, if I am such a violator of what a good judge should do, why does (b) (6) not have some concrete examples? For an attorney with the experience (b) (6) claims, I find it pathetic for him to base on rumor, innuendo, and lies, a formal complaint about an IJ.

From: Smith, Gary (EOIR)
Sent: Thursday, October 22, 2009 12:56 PM
To: (b) (6) (EOIR)
Subject: RE: IJC Memo - Matter of (b) (6) (BIA September 30, 2009)

I'll extend it until October 29th. That should help. Thanks for letting me know.

From: (b) (6) (EOIR)
Sent: Thursday, October 22, 2009 12:55 PM
To: Smith, Gary (EOIR)
Subject: RE: IJC Memo - Matter of (b) (6) (BIA September 30, 2009)

Judge Smith: Is it possible for you to give me an extension for my comments, at least until Monday. My hearing docket is full today and tomorrow

Non-Responsive

Non-Responsive

Thanking you in advance for your time and consideration. IJ (b) (6)

From: Smith, Gary (EOIR)
Sent: Wednesday, October 07, 2009 3:55 PM

14729; 14833

6/4/2010

To: (b) (6) (EOIR)

Subject: FW: IJC Memo - Matter of (b) (6) (BIA September 30, 2009)

Importance: High

Dear Judge (b) (6)

Attached is a memorandum with attachments relating to a case that you heard on October 24 and 28, 2005, Matter of (b) (6). In this case the (b) (6) Circuit Court of Appeals rejected the adverse credibility determination and remanded this case, recommending that the BIA remand the case for a hearing before a different immigration judge. The BIA did so. The (b) (6) Circuit in its decision remanding the case, stated: "The prosecutorial manner of this IJ during (b) (6) hearing and the inquisitorial inquiry that underpins some of the IJ's reasons for rejecting Issiaka's credibility cause us to conclude that everyone is better served by having another 'pair of eyes' evaluate (b) (6) credibility if the Board concludes that the record must be developed further."

I have reviewed the matters provided by the BIA Chairman and the status of the case in our database. Please provide me your comments regarding the (b) (6) Circuit's characterization of your conduct of the proceedings, by not later than **October 23, 2009**. The Record of Proceedings will be mailed back to the (b) (6) Court.

Thanks.

Gary W. Smith
Assistant Chief Immigration Judge
(703) 305-1247

Post-Script: I have also attached (b) (6) complaint(s) that I provided you at the Court on September 16th and would like for you to provide me your comments regarding his complaint on or before October 23d. Thanks.

14730; 14834

6/4/2010

EOIR FOIA Processing (EOIR)

From: Burr, Sarah (EOIR)
Sent: Thursday, June 18, 2009 8:21 AM
To: Keller, Mary Beth (EOIR)
Cc: Pomeranz, Sharon (EOIR)
Subject: FW: (b) (6) and (b) (6) decisions

From: (b) (6) (EOIR)
Sent: Wednesday, June 17, 2009 11:21 AM
To: Burr, Sarah (EOIR)
Subject: RE: (b) (6) and (b) (6) decisions

I agree.

From: Burr, Sarah (EOIR)
Sent: Tuesday, June 16, 2009 1:55 PM
To: (b) (6) (EOIR)
Subject: (b) (6) and (b) (6) decisions

To recap our discussion today, I am ordering you to issue decisions in each of these cases no later than Friday, July 17, 2009. The (b) (6) decision, A (b) (6) was remanded from the BIA in April, 2004 for a full decision and none has been issued to date, over 5 years later. The (b) (6) case, A (b) (6) was remanded by the Board in December, 2003, and no decision has been issued for almost 6 years. These cases must be decided by July 17th, 2009.

14812

EOIR FOIA Processing (EOIR)

From: Wahowiak, Marlene (OPR) <Marlene.Wahowiak2@usdoj.gov>
Sent: Tuesday, February 10, 2009 1:48 PM
To: Keller, Mary Beth (EOIR)
Subject: RE: IJ (b) (6)

Can someone forward the BIA decisions in these cases along with (b) (6) decisions?

Thanks,
Marlene

From: Keller, Mary Beth (EOIR) [mailto:Mary.Beth.Keller@usdoj.gov]
Sent: Tuesday, February 10, 2009 12:30 PM
To: Wahowiak, Marlene (OPR)
Subject: RE: IJ (b) (6)

Marlene,
Also, per our conversation re: Judge (b) (6) though we have received some additional "complaints" relating to Judge (b) (6) they were either frivolous, not substantiated, or matters that were appropriately addressed to the BIA.
mtk

MaryBeth Keller
Assistant Chief Immigration Judge
OCLJ/EOIR
Mary.Beth.Keller@usdoj.gov
703.305.1247

From: Keller, Mary Beth (EOIR)
Sent: Tuesday, February 10, 2009 10:47 AM
To: Wahowiak, Marlene (OPR)
Subject: RE: IJ (b) (6)

Marlene,

As with IJ (b) (6) also do not have supervisory records on Judge (b) (6), those would be with ACIJ Burr in (b) (6). (b) (6) am not aware of any prior disciplinary actions.

According to my information, following some criticisms by the (b) (6) Circuit, as well as some concerns expressed by the BIA, the judge was counseled and sent to training at the (b) (6) immigration court with IJ (b) (6) in April 2008.

We were aware of the (b) (6) case in 2007 when it was being briefed by OIL, as well as when it was being argued, i.e., before the decision. We were also apprised by the AUSA who handled the case of another argument that occurred in the (b) (6) Circuit in October 2007, in which the ij was criticized at oa, but the actual decision that came out was only a summary order. (b) (6)

See also

(b) (6) 2006).

(b) (6) BIA 2/01/2007

1494; 15086; 15175; 15190; 15237;
15321

(b) (6) BIA 10/24/2008.

(b) (6) BIA 10/22/2008.

(b) (6) BIA 11/06/2008.

(b) (6) BIA 12/18/2008.

(b) (6) BIA 1/16/2009.

Obviously many of the above cases out of BIA came following (b) (6) as well as post dated the judge's training in April 2008.

Mtk

MaryBeth Keller
Assistant Chief Immigration Judge
OCIJ/EOIR
Mary.Beth.Keller@usdoj.gov
703.305.1247

From: Wahowiak, Marlene (OPR) [<mailto:Marlene.Wahowiak2@usdoj.gov>]
Sent: Monday, February 09, 2009 5:30 PM
To: Keller, Mary Beth (EOIR)
Subject: RE: (b) (6)

Thanks.

From: Keller, Mary Beth (EOIR) [<mailto:Mary.Beth.Keller@usdoj.gov>]
Sent: Monday, February 09, 2009 5:27 PM
To: Wahowiak, Marlene (OPR)
Subject: RE: (b) (6)

Marlene,
I should be able to get back to you tomorrow.
Tx.
mtk

MaryBeth Keller
Assistant Chief Immigration Judge
OCIJ/EOIR
Mary.Beth.Keller@usdoj.gov
703.305.1247

From: Wahowiak, Marlene (OPR) [<mailto:Marlene.Wahowiak2@usdoj.gov>]
Sent: Sunday, February 08, 2009 12:52 PM
To: Keller, Mary Beth (EOIR)
Subject: (b) (6)

1495; 15087; 15176; 15191; 15238;
15322;

Mary Beth:

I'm preparing for an upcoming interview with IJ (b) (6) Any priors, complaints, etc. re: (b) (6)

The case I have is (b) (6)

**Thanks,
Marlene**

1496; 15088; 15177; 15192;
15239; 15323

Moutinho, Deborah (EOIR)

From: Keller, Mary Beth (EOIR)
Sent: Tuesday, January 11, 2011 5:44 PM
To: Moutinho, Deborah (EOIR)
Cc: Keller, Mary Beth (EOIR); Dufresne, Jill (EOIR)
Subject: (b) (6) 330

D –

I've edited the language describing the allegations to reflect the problem better. We can close this one out as merits related. The BIA found the judge erred in certifying the case back for "reconsideration." If you do that defiantly, as Judge (b)(6)/Non-Response did, you may wind up with a disciplinary action. Here, the BIA was more reserved in its language finding the certification was "error". It was really a performance issue that I'm sure the subsequent BIA decision took care of!

I will provide copies of all the decisions to Judge Dufresne, just so that she is aware of what transpired in the past with Judge (b) (6) on this – it happened in 2008 so pre dates the evaluation period.

mtk

MaryBeth Keller

Assistant Chief Immigration Judge

EOIR/OCIJ

703/305-1247

mary.beth.keller@usdoj.gov

15198

EOIR FOIA Processing (EOIR)

From: Dean, Larry R. (EOIR)
Sent: Wednesday, January 04, 2012 9:24 AM
To: Keller, Mary Beth (EOIR)
Subject: RE: (b) (6) complaint #396

It was a verbal counseling. I'm not sure if I have the date; I will try to find that, but believe it was in the late October timeframe. LRD

From: Keller, Mary Beth (EOIR)
Sent: Tuesday, January 03, 2012 5:10 PM
To: Dean, Larry R. (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: (b) (6) complaint #396

Larry,
This one is old old old.
Believe that this one was closed out with performance counseling (despite being outside of the rating period) (b)(5) & Non-Responsive
(b)(5) & Non-Responsive
Need to close out – is it oral performance counseling, and if so, what date?
Tx.
Mtk

From: Dean, Larry R. (EOIR)
Sent: Thursday, September 08, 2011 4:50 PM
To: Keller, Mary Beth (EOIR)
Subject: RE: report questions

No update on (b) (6) I should have taken Deborah up on her offer to get the ROP for me when I was at HQ. Not here yet.

You are correct on (b) (6) It was because of the delay treated as a performance issue. Incidentally, October 22 is the end of the current extension. It will come very quickly.

LRD

From: Keller, Mary Beth (EOIR)
Sent: Thursday, September 08, 2011 2:28 PM
To: Dean, Larry R. (EOIR)
Subject: report questions

Larry,

Here's where I have questions on your IJs:

(b) (6) – Matter of (b) (6) came in from BIA on 7/11/11 – any update on that?

(b) (6) – Matter of (b) (6) from BIA on 10/20/10. Last entries are that you rec'd the rop on 10/27/10 and (b)(5) & Non-Responsive

(b)(5) & Non-Responsive

(b)(5) & Non-Responsive Did you decide to just mention this in (b) (6) performance assessment or am I making that up?

EOIR FOIA Processing (EOIR)

From: Scheinkman, Rena (EOIR)
Sent: Thursday, November 01, 2012 10:16 AM
To: Davis, John (EOIR); McGoings, Michael (EOIR)
Cc: Keller, Mary Beth (EOIR); Rosenblum, Jeff (EOIR)
Subject: RE: (b) (6) - grievance due today

Good morning, Judge Davis.

As far as I know, we have not received a grievance. Judge McGoings said he would forward it if he received anything. I would give it until Monday – just to make sure it's not in the mail. Then you can pick the day you want (b) (6) to serve the suspension, and have (b) (6) actually serve it.

As for the other things, I am working on a draft PIP.

Please let me know if you need anything else.
Rena

From: Davis, John (EOIR)
Sent: Thursday, November 01, 2012 9:57 AM
To: Scheinkman, Rena (EOIR); McGoings, Michael (EOIR)
Cc: Keller, Mary Beth (EOIR); Rosenblum, Jeff (EOIR)
Subject: RE: (b) (6) - grievance due today

Good Morning Rena,

Did we receive anything from Judge (b) (6)? If not, can you tell me how we proceed forward.

Thank You!

Warmest Regards

John W. Davis
Assistant Chief Immigration Judge
3130 North Oakland Street
Aurora, CO 80010
(303) 739-5203

From: Scheinkman, Rena (EOIR)
Sent: Wednesday, October 31, 2012 8:11 AM
To: McGoings, Michael (EOIR)
Cc: Davis, John (EOIR); Keller, Mary Beth (EOIR); Rosenblum, Jeff (EOIR)
Subject: (b) (6) grievance due today

Judge McGoings:

16303

Today is the deadline for U (b) (6) to file a grievance o (b) (6) one-day suspension. Please let me know if you receive something.

Thanks!

Rena

Rena Scheinkman

Associate General Counsel

EOIR/OGC, Employee & Labor Relations Unit

T: 703.605.0442

F: 703.605.0491

rena.scheinkman@usdoj.gov

16304



U.S. Department of Justice

Executive Office for Immigration Review

Immigration Court

Assistant Chief Immigration Judge

*26 Federal Plaza, 12th Floor Room 1237
New York, NY 10278*

February 20, 2013

To: (b) (6)
Immigration Judge

From: Robert Weisel (RW.)
Assistant Chief Immigration Judge

Re: Letter of Counseling

By this letter, I counsel you for inappropriate, demeaning remarks in connection with two matters over which you presided, and which the Board of Immigration Appeals remanded to a different immigration judge. With this counseling, I expect you to improve your demeanor and professionalism, without the need for further intervention or future administrative action. The chairman of the Board of Immigration Appeals had referred the two matters at issue to the Chief Immigration Judge, for review and I specifically relate the following:

1. Matter of (b) (6) (BIA October 12, 2012). In rendering its opinion, the Board stated that "While we do not determine whether the Immigration Judge acted improperly in proceedings below, we deem it appropriate, under the totality of the circumstances to remand this matter to a different Immigration Judge, particularly given that the allegations of bias and prejudice are coupled with concerns raised as to the respondent's mental competency."

Additionally, inappropriate comments by you in the proceeding held on June 9, 2011 (transcript at page 9), undermined the attorney's ability to fully represent his client, including that "I am not interested in the opinions of the law firm. You thought he had problems, you didn't get an evaluation. Maybe you couldn't because he wasn't cooperating, but I am not interested in the opinion of the law firm about psychological problems, especially from a person who has only been with the firm for a few months." Furthermore, additional comments made by you cast doubt on your impartiality and demonstrate a rush to demeaning conclusions without any support

16445

in the record (see transcript at page 11), to wit: "You haven't had a mental, mental health evaluation done, and I don't know the reason why.

I don't think there is any indication that your client is mentally incapable of getting his fingerprints renewed, which is the issue in question ... You are not a mental health professional ... I have listened to the respondent for several hours in Court on other occasions and seen him in Court on master calendar hearings, and I am not going to venture an opinion about his psychological health. But, certainly think he is capable of getting his biometrics done on time."

2. Matter of (b) (6) (BIA December 10, 2012). In this matter, the Board opined that "We find certain of the Immigration Judge's statements regarding the respondent's past relationships and his cognitive abilities to be unprofessional (IJ at 13-14, 16-17). Furthermore, we agree that the Immigration Judge improperly injected (b) (6) past experience to make assumptions about what occurred during the respondent's prior deportation proceedings in (b) (6)"

Also, your comments in the Oral Decision on February 24th 2011 were inappropriate and (again) relied on assumptions, without any support in the record, to wit: "So, the idea that a person spent a substantial period of time in an Immigration detention center, went to court twice, but did not understand he had a deportation case is, in the Court's view, close to the point of being totally unbelievable, even if the person had more cognitive problems than the respondent seems to have."

In sum, I counsel you to refrain from using demeaning statements, particularly with regard to the mental health of respondents, and from offering speculative and gratuitous commentaries. Such remarks are inappropriate and unprofessional. You are also cautioned not to engage in conduct which tends to cut off or inhibit attorneys from adequately developing the record, and thereby denying a full and fair proceeding.

Please contact me this week after you have reviewed my comments to set up a mutually convenient time for us to further discuss these cases.

I acknowledge receipt of this Letter of Counseling as noted below.

(b) (6)

Employee

Date

2-20-13

16446

Keller, Mary Beth (EOIR)

From: Scheinkman, Rena (EOIR)
Sent: Tuesday, June 11, 2013 5:03 PM
To: Keller, Mary Beth (EOIR); McGoings, Michael (EOIR)
Subject: Re: OIG Matters: (b) (6) and (b) (6)

No issue. This makes sense. Thanks.

From: Keller, Mary Beth (EOIR)
Sent: Tuesday, June 11, 2013 04:59 PM
To: Scheinkman, Rena (EOIR); McGoings, Michael (EOIR)
Subject: RE: OIG Matters: (b) (6) and (b) (6)

And, actually, the one against Judge (b) (6) would be closed as unsubstantiated, unless and until something would come back from eeo.
Does that create an issue for you? I just think that for Mike to "investigate" the matter with a pending eeo is problematic. Mtk

MaryBeth Keller

Assistant Chief Immigration Judge

From: Scheinkman, Rena (EOIR)
Sent: Tuesday, June 11, 2013 4:50 PM
To: McGoings, Michael (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: RE: OIG Matters: (b) (6) and (b) (6)

Understood. Thank you.

From: McGoings, Michael (EOIR)
Sent: Tuesday, June 11, 2013 4:48 PM
To: Scheinkman, Rena (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: RE: OIG Matters: (b) (6) and (b) (6)

Rena – your description of both matters is correct. We also agreed that, should the EEO investigation in the first matter disclose any ACU misconduct warranting an investigation, the complaint would be reopened. Thanks.

MCM

From: Scheinkman, Rena (EOIR)
Sent: Tuesday, June 11, 2013 3:41 PM
To: McGoings, Michael (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: RE: OIG Matters: (b) (6) and (b) (6)

Judge McGoings:

16542

Just to confirm, based on further discussions between you and MaryBeth, OCIJ will close both cases without further action. The first matter (b) (6) will be entered into the IJ complaint database as a complaint against ACIJ (b) (6) and closed on the basis that it is the subject of a pending EEO investigation.

Please let me know if this is accurate, or make any necessary corrections if I misunderstood something.

Thank you,
Rena

From: McGoings, Michael (EOIR)
Sent: Tuesday, June 11, 2013 8:32 AM
To: Scheinkman, Rena (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: RE: OIG Matters: (b) (6) and (b) (6)

Rena –

(b) (5)

No problem closing out the second matter. Judge (b) (6) retired several years ago. Thanks.

MCM

From: Scheinkman, Rena (EOIR)
Sent: Monday, June 10, 2013 10:55 AM
To: McGoings, Michael (EOIR)
Cc: Keller, Mary Beth (EOIR); Rosenblum, Jeff (EOIR)
Subject: OIG Matters: (b) (6) and (b) (6)

Judge McGoings:

Attached please find two OIG matters. In both matters, OIG has determined that an investigation is not necessary and has referred the matter to EOIR for appropriate action.

The first one is a purported whistleblower action by (b) (6) an interpreter in (b) (6). The complaint asserts a number of allegations against ACIJ (b) (6) including alleged harassment when (b) (6) issued him a letter of counseling and an ethics issue involving (b) (6) outside employment. Please note that the events surrounding the letter of counseling are the subject of a pending EEO investigation. (b) (5)

(b) (5)

The second one is an allegation that IJ (b) (6) (Immigration Court) accepted fraudulent documents related to citizens of Eritrea. I reviewed the list of judges at the (b) (6) Court, and I was not able to find (b) (6). Again, I do not believe that any further action is needed in this matter, but I defer to you and would be happy to discuss this matter at your convenience.

I look forward to your thoughts.

16543

Moutinho, Deborah (EOIR)

From: Keller, Mary Beth (EOIR)
Sent: Friday, October 01, 2010 1:24 PM
To: Burr, Sarah (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: RE: Attorney complaint about Judge (b) (6)

Ok, we have this one. I will have Deborah forward you the intake form that I filled out for you, along with a copy of the complaint that (b) (6) filed w/ Judge (b) (6) about Judge (b) (6) handling of the case when she had it. (b) (6) seems to think his complaint about Judge (b) (6) is still pending, but Mike responded to him, he just didn't like the response and sent Mike another letter, which I doubt Mike subsequently responded to. I have no record of it if he did. Will take a look in (b) (6) file on Monday when Deborah is back and send you anything else that might assist you from there, as well.
Tx,
mtk

From: Burr, Sarah (EOIR)
Sent: Monday, September 13, 2010 1:26 PM
To: Keller, Mary Beth (EOIR)
Subject: Attorney complaint about Judge (b) (6)

Mary Beth, I'm going to fax you tomorrow a complaint I just received about Judge (b) (6) I believe the complaint to be bogus, but I think we have to enter it into the database. It alleges that (b) (6) is unable to adjudicate the case, is biased and has committed serious misconduct.

Sarah M. Burr
Assistant Chief Immigration Judge
26 Federal Plaza
New York, N.Y.

3269

From: Burr, Sarah (EOIR)
Sent: Friday, February 04, 2011 3:06 PM
To: Keller, Mary Beth (EOIR); Moutinho, Deborah (EOIR)
Cc: Rosenblum, Jeff (EOIR)
Subject: IJ (b) (6)

Here is my chronology on complaints about IJ (b) (6) intemperate behavior on the bench:

12/12/06: written complaint by (b) (6) District Counsel, (b) (6) & (b) (7)(C) to David Neal alleging inappropriate courtroom demeanor, offensive and unprofessional conduct, as well as personal attacks on TAs. Also, cuts off TA cross.

1/10/07: ACIJ does oral counseling.

2/17/10: Letter from DDC (b) (6) to ACIJ that IJ puts too much pressure on TAs to shorten hearings by cutting off cross and trying to force TAs to take short decisions. Also, BIA decision in (b) (6) where BIA criticizes IJ for "regrettable disagreements" with TA on the record, doing direct exam of respondent when represented by accredited rep., and cutting off TA cross. Remanded so TA can do full cross.

2/17/10: ACIJ does oral counseling and advised IJ not to cut off TA cross.

1/11/11: Email from TA to (b) (6) DDC, to ACIJ regarding 2 cases (on same day) where IJ pressured and intimidated the respondent's attorney and violated the attorney-client privilege (I attached the email to the fax I sent you today). On the same day, 1/11/11, I gave a copy of the (b) (6) email and spoke with IJ. Told (b) (6) I would listen to the DAR recordings and get back to (b) (6). Over the next several weeks I did listen to the DAR recordings and the TA's summary contained in the email is accurate.

2/4/11: spoke to IJ today. (b) (6) has not listened to the DAR recordings and I told (b) (6) to do so. I told (b) (6) that I was surprised and upset by (b) (6) conduct, and that given (b) (6) experience, (b) (6) was demeaning (b) (6) by acting like this in court. IJ very sorry about (b) (6) conduct. Says (b) (6) felt sick about it afterwards and is still regretful that (b) (6) acted in such a manner. We spoke for 15-20 minutes about controlling anger and irritation in court and what (b) (6) can and cannot do about lawyers who are not prepared.

Sarah M. Burr
Assistant Chief Immigration Judge
26 Federal Plaza
New York, N.Y.

4683

2/28/2011

EOIR FOIA Processing (EOIR)

From: Sukkar, Elisa (EOIR)
Sent: Thursday, April 01, 2010 1:48 PM
To: Keller, Mary Beth (EOIR)
Cc: Moutinho, Deborah (EOIR); Morris, Florencio (EOIR); Kelly, Ed (EOIR)
Subject: RE: (b) (6)

MTK:

I have reviewed my IJ (b) (6) file and this is what I have as a status report. This is what my handwritten notes reflect.

On January 11, 2010, I gave to Judge (b) (6) the materials covering the (b) (6) and (b) (6) (b) (6). We had a discussion in (b) (6) chambers. We went over the fact the BIA is indicating (b) (6) was "brusque" in a footnote in Matter of (b) (6). Also, the BIA felt that the comments about the fact they had kids when they had no status was unwarranted. We agreed to meet again. The IJ came back to me the same day and said (b) (6) had reviewed all and acknowledged that, upon reading the transcripts, some of (b) (6) comments were wrong, such as asking the BIA to "please help with standards". I asked (b) (6) not to make pleas to the BIA as to what they should do. We agreed to meet again.

On January 25, 2010, I met with Judge (b) (6) in the conference room to go over the PWP review. We reviewed the PWP. I again had copies of the two decisions mentioned above and we went over again the criticisms from the BIA. The significance of the term "brusque" (after I consulted with ACIJ Weil). I told (b) (6) the parties at times feel (b) (6) is impatient. (b) (6) said (b) (6) gets stressed out but will calm down. Non-Responsive

Non-Responsive

As part of the review with IJ (b) (6), I also addressed the request that I received as to how to file a complaint against (b) (6) and showed (b) (6) a copy of the e-mail I received from attorney (b) (6). The e-mail contained enough criticism for me to address with the IJ. I received the e-mail on December 16, 2009 and I had my first discussion with the IJ on January 5, 2010 about her comments. I again discussed the criticism with the IJ on January 25, 2010. I asked (b) (6) to be careful because the next step she will make is to ask (b) (6) to recuse (b) (6) has since reported that when the attorney came the next time, (b) (6) was calm, (b) (6) granted her continuance and there have not been any additional problems with counsel. The IJ stresses over case completion goals and what (b) (6) feels is expected of (b) (6) on the bench. (b) (6) has reported to me that (b) (6) is using a different approach when (b) (6) gets hit with last minute continuances. (The attorney that complained is new to this field. Last week she wrote to me. She was upset that the court has not issued a notice of hearing to one of her clients. When I looked into it, it turns out that DHS has not filed the NTA with the court. I explained to her that without the NTA, the court will not issue a Notice of Hearing to her client.)

This is the extent of my notes. Please advise if you need anything else. EMS

From: Keller, Mary Beth (EOIR)
Sent: Wednesday, March 31, 2010 9:52 PM
To: Sukkar, Elisa (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: Re: (b) (6)

Great. No need for formal. But the dates wld be good. :)

Sent from my BlackBerry Wireless Device

From: Sukkar, Elisa (EOIR)
To: Keller, Mary Beth (EOIR)
Cc: Moutinho, Deborah (EOIR)
Sent: Wed Mar 31 19:59:38 2010
Subject: RE: (b) (6)
MTK:

Both cases were addressed with the IJ. We gave (b) (6) the decisions. We discussed twice. These cases were included as part of (b) (6) PWP review which we did in Jan/Feb 2010. We read the comments together and we went over the comments in the BIA decision and the transcripts. (b) (6) was very receptive. I talked to (b) (6) about getting agitated on the bench and to give (b) (6) more time if (b) (6) feels pressured by (b) (6) Masters.

There had been an attorney inquiring as to how to complain about the IJ. I provided the information to the attorney. I do not know if she filed a formal complaint since I have not received any complaints from OCIJ on the IJ. But her comments to me were addressed with the IJ nevertheless and the fact that she was new to the case and instead of granting a continuance, (b) (6) gave her 10 minutes to go outside and prepare herself to address the charges. I explained that there is no need to rush these things. All of this was discussed with the IJ during the informal PWP review.

I will write a formal memo to you tomorrow with more details as to dates.

Thanks. EMS

From: Keller, Mary Beth (EOIR)
Sent: Wednesday, March 31, 2010 6:04 PM
To: Sukkar, Elisa (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: RE: (b) (6)

Same thing with (b) (6) sent to you on Jan 07.
Tx.
mtk

From: Keller, Mary Beth (EOIR)
Sent: Wednesday, March 31, 2010 6:03 PM
To: Sukkar, Elisa (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: (b) (6)

Elisa,
I have the (b) (6) from BIA that went to you on Jan 6, and an email saying you were going to talk to the judge on Jan 08.
What is the resolution of this one?
Tx.
mtk

MaryBeth Keller
Assistant Chief Immigration Judge
EOIR/OCIJ
703/305-1247
mary.beth.keller@usdoj.gov

5673; 5702

To: Sukkar, Elisa (EOIR)
Subject: RE: IJ Conduct Complaint

I'm available now if you are. I have 2 cases this afternoon.

Sincerely,

(b) (6)
Immigration Judge
U.S. Department of Justice

(b) (6)

From: Sukkar, Elisa (EOIR)
Sent: Thursday, April 18, 2013 10:33 AM
To: (b) (6) (EOIR)
Subject: RE: IJ Conduct Complaint

Good Morning Judge:

The attorney explains that she was not trying to address the OSC at all but was trying to make it clear, after being asked, that she had no file to give. That she had only been representing the respondent for 45 days and her file only consisted of a COV motion and a skeleton cancellation application both of which she had already e-mailed to (b) (6). There was no file to hand over. She said that to the extent you had issued an OSC and felt disciplinary proceedings were over her head, that she wanted it to be known that she had no documents or files to turn over. Any and all documents, at best, were with the first attorney of record and not with her. That is what she was trying to explain to you.

She had no intent of addressing the OSC in open court and in front of her colleagues. Please keep in mind that any discussion of disciplinary proceedings is confidential and she had no intent of addressing your concerns publicly.

She felt she never had a chance to even explain all of this to you when she was interrupted, not allowed to explain and then was expelled from the courtroom for no reason. Hearing someone out fully is crucial so that matters do not escalate.

You assumed that (b) (6) was not representing the truth. (b) (6) turned over the extent of the file that was in her possession. And that was what she was trying to explain to you. Both attorneys were representing the truth. But it seems there was this assumption by the court, as you have indicated below, that one was not telling the truth.

Even the DHS attorney was objecting to what the court was doing and the path that the discussion had taken. It was good advice and, as you have indicated, a good suggestion.

Let's try to connect this afternoon at the end of the day so we can discuss further. I am at (b) (6) today at (b) (6)

Thanks you,

EMS

7230

From: (b) (6) EOIR)
Sent: Thursday, April 18, 2013 8:44 AM
To: Sukkar, Elisa (EOIR)
Subject: RE: IJ Conduct Complaint
Importance: High

Good morning Judge, I listened to the DAR last week.

My main concern was that no further delays be caused resulting from the respondent's file not being turned over to new counsel. (b) (6) stated on the record that she had provided (b) (6) with the file. After (b) (6) left the Courtroom (b) (6) clearly stated that was not the case. (b) (6) then returned and I asked her to please address only where the file was (this was clearly a huge mistake on my part) and she insisted on addressing the OSC and further kept trying to tell me why she was having trouble representing the Respondent implying that the Respondent was misrepresenting things to her. His statements on the record from the last hearing were that she told him she would not appear in court if he didn't pay her. This is exactly what she told my assistant when she called to tell him to let me know she had no intention of appearing in court in spite of my order if she was not paid.

(b) (6) insisted on addressing the OSC in open court. I made it clear to her that I did not have the time to hear her on the OSC, that she could and should address it in writing and that I needed to move on because I had interrupted another hearing in order to reset this case as it was clear I would not have sufficient time to hear the matter that day. I literally pleaded with her repeatedly to simply address the issue of the file transfer as concisely as possible then and there and to address the OSC in writing. When it was clear that she was going to continue speaking and doing as she pleased I did what was advised to me in training and that was to take a recess (announce that I was going to step out and leave the courtroom) to diffuse the situation. I did tell her that I expected her to remove herself from the courtroom by the time I returned and she did so. When I left the bench I went to (b) (6) and let her know what was going on so that any further escalation could be avoided and I turned it over to her. As stated, by the time I returned she had left. Once I returned the DHS found it necessary to state on the record that after I had left the Court (b) (6) attempted to engage him repeatedly expecting him to take a position which he declined before she left. I learned of this because he insisted on addressing this on the record. His statement can be heard on the DAR as well.

(b) (6) was present during this incident as was the DHS attorney, (b) (6) and of course (b) (6) respondent's new attorney and the respondent himself.

In retrospect I understand that I should not have addressed her as to the whereabouts of the file. I did this because (b) (6) had made a clear statement that (b) (6) representation that she had given her the respondent's file was not true. I figured I'd want the opportunity to address that if my representation to a court was questioned and for this reason alone I called on her to state her position. I realize this was a huge mistake. This was raised by the DHS and I clearly should have done as he suggested which was to not address the matter in court.

I do not believe I treated her disrespectfully. I trust you will let me know if this is not reflected in the DAR when we discuss the matter. I will make myself available at your convenience. Please let me know when your schedule allows.

Thank you.

(b) (6)

Sincerely,

(b) (6)

7231

(b) (6)

From: Sukkar, Elisa (EOIR)
Sent: Wednesday, April 17, 2013 5:12 PM
To: (b) (6) (EOIR)
Subject: IJ Conduct Complaint
Importance: High

Good Afternoon Judge (b) (6):

I wanted you to know that attorney (b) (6) has called lodging a complaint as to events that transpired in your courtroom on April 10, 2013 in the matter of A(b) (6).

This is the case involving the COV and the OSC that you issued in which EOIR Counsel Jennifer Barnes was contacted.

The attorney will mail a copy of her response to the OSC for my review so that I become familiar with this matter.

She complains how she was treated during the hearing on April 10, 2013. She indicated she felt humiliated when after being asked to address the issue of the respondent's file in "one minute" (after she had been granted a Motion to Withdraw), she was interrupted, was not allowed to explain and then was thrown out of the courtroom when you told her she needed to be "gone" or she had to "remove herself" from the courtroom by the time you came back to address the matter with the new attorney.

She also indicated that the OSC was first issued and served on the respondent in open court on April 4, 2013 before it was even served on her.

Please listen to all the DAR recordings in this matter and please provide a response as soon as possible.

After you listen to DAR, please let's set up another meeting so we can address this matter.

Thank you,

Judge Sukkar

7232

She stated that we might want to look into finding (b) (6) incompetent if it was found that he could not understand the proceedings. I asked the court at that time to schedule a hearing and that i would have to look into that since I was not familiar wiht the issue of incompetence in immigration proceedings and needed to know more about that but that in the meantime we were adamant about not having the hearings conducted in Ouoloff.

Judge (b) (6) indicated that (b) (6) will be scheduling the hearing for June 18, 2010 and that (b) (6) will not be ordering an interpreter. As we were exiting the courtroom Judge (b) (6) once more asked why my client was in (b) (6) and since (b) (6) seemed obsessed with the question I asked why did (b) (6) insist on knowing why he was in (b) (6) (b) (6) as my client did indeed have the right to be in (b) (6) and two moves in 16 years seemed reasonable to me. (b) (6) asked me what my client did for a living and I told (b) (6) I had no idea and once again i c not see the relevance of what he did and (b) (6) said that it was relevent as it would indicate what langage he spoke at work. I figured at this point that this was a lost cause. We have never claimed that my client did not speak any English or that he did not speak some Ouloff and some French., What we have said is that my client does speak some english, some French and some Ouloff but it is broken English, French and Ouloff. He does not speak enough of those languages to have the hearing conducted in those languages.

The whole hearing was lost with arguments with the interpreter and Judge (b) (6) rather than dealing with the issues at hand. The pleadings were never taken. It was not clear to the gouvernement or us whether this was a master hearing or an individual hearing too. and Judge (b) (6) was just plain wrong in (b) (6) line of questioning and (b) (6) stand.

(b) (6) does not control the fact that the Court cannot find a serer interpreter any more than he can help the fact that he is Serer. and it is not fair for the court to demand he become something he is not. He is someone from Senegal, who happens to be Serer and is illiterate and does not speak but a smittering of Ouoloff, French and English. These facts are facts that the BIA have found convincing enough to remand the case for it to be processed in a language (b) (6) can understand. We are not sure why Judge (b) (6) wants to ignore these facts.

A hearing of the transcript will make it clear that (b) (6) cannot indeed receive a fair hearing in the hand of Judge (b) (6)

As well as the complaint they lodged against the interpreter (b) (6)

I am writing this complaint in conjunction with a matter I have before your office regarding Judge (b) (6) I am still waiting to hear from the office regarding the follow up on that matter as we were back in Court yesterday and there are even more issues at hand.

The interpreter for the 1:30 master hearing with Judge (b) (6) at the Immigration Court in (b) (6) in Courtroom (b) (6) is the reason for this complaint. (b) (6) was supposed to interpret in Serer for the

respondent. When we got to court he started speaking in Ouoloff. I tried to interject and object as the hearing was not supposed to be conducted in Ouoloff. This case was remanded from the BIA because respondent's best language is Serer and while he does speak some Ouoloff, he does not understand it enough to conduct his hearing in Ouoloff and his first hearings were so full of errors that the Board found that it would not be a fair hearing if the language spoken was Ouoloff.

Since I speak Ouoloff (but not Serer) I could tell that the interpreter was speaking in Ouoloff and I objected to this and IJ (b) (6) stated that I was not given leave to speak and the interpreter continued to speak in Ouoloff. Finally he was asked what language he spoke and he said that he spoke Serer Sine, and my client spoke Serer Baol and that he did not speak or understand Serer Baol as the dialects are different. While he said that he spoke Serer Sine he did not utter a word in that language. Absolutely every thing he spoke was in Ouoloff as I understood every single thing he spoke.

(b) (6) when my objection were continued told the judge that my client spoke Ouoloff very well and that every one in Senegal spoke Ouoloff and that indeed this was the language the was written in school. The judge started taking notes about what (b) (6) was telling. I further objected since the interpreter was there to interpret and was not admitted as an expert in country customs to be able to make such statements. Further I stated that the statements was not only inappropriate but inaccurate as I happened to be from Senegal and I know that not every one spoke Ouoloff and that Ouoloff was not a written language. I also have to note that if this was a language thought in school since my client is illiterate this would not apply to him either.

Further, I am not sure how (b) (6) could have been able to assess the language skills of my client as the only communication we had with him prior to the hearing was when he got in and greeted us. He wanted to continue the conversation with us but I waived at him to proceed to a chair because Judge (b) (6) was conducting a hearing and I was not looking forward to a reprimand.

I am not sure how from a greeting he could assess the level of confidence in a language.

(b) (6) volunteered some more information and just kept going because he could see that Judge (b) (6) welcomed his comments and we argued for a good few minutes, which should not have happened at all. (b) (6) was not there to be an expert or a witness but rather to interpret and he went beyond what his role was.

I am not sure whether the Judge relied on his opinions or not but (b) (6) pushed for the government to administratively close the case because my client did not seem to want to speak in a language that he seem to understand. If he did not solely help (b) (6) make that decision (b) (6) did contribute to an already difficult situation by volunteering information that was totally wrong and not asked for and behaved quite unprofessionally from the time he arrived in court. His role was

to interpret what my client spoke and he could not do that because obviously he must not speak Serer as he did not utter a word in that language. And he tried to make for his ineptitude by volunteering things outside of his domain.

This is a serious matter and I hope to hear from your office soon about the steps necessary to have this matter resolved in an appropriate manner. I have also contacted Lionbridge directly to let them know that I expect to hear about actual steps taken to make sure this sort of things do not happen.

Counsel does not agree with your office's assessment about keeping judge (b) (6) on this case but due to the slow response to our concerns and the lack of even an acknowledgement of our complaints, it is not a stretch to believe that the office has taken quite lightly our concerns and the response is not a surprise.

As for your assessment regarding the way things were conducted in the courtroom, counsel does agree that the hearing was out of control and that it ended up being a shouting match between the different parties. Hearings should be conducted with proper decorum. The reason why Judges are asked to conduct hearing with impartiality and show respect to the courtroom and parties is to avoid such situations.

Judges have great control over how hearings are conducted. A Judge that is not following proper decorum leads to the situation in which we found ourselves. The fact that Judge (b) (6) failed to control (b) (6) courtroom and acted as if (b) (6) owns the respondents did not help the situation. (b) (6) does not have any respect for the courtroom, the respondents or the attorneys representing the non citizens. And it shows.

My client does not stand a chance with Judge (b) (6) to have a fair hearing. If Judge (b) (6) could not entertain the idea of finding an interpreter, something that so clearly falls under the court's responsibility, (b) (6) is not going to entertain such a discretionary claim such as a *nunc pro tunc* one let alone finding (b) (6) way to granting it no matter what the arguments are going to be.

Respectfully,

(b) (6)

Moutinho, Deborah (EOIR)

From: Keller, Mary Beth (EOIR)
Sent: Thursday, October 28, 2010 3:44 PM
To: Moutinho, Deborah (EOIR)
Subject: FW: Judge (b) (6)

From: Keller, Mary Beth (EOIR)
Sent: Thursday, October 28, 2010 3:43 PM
To: Dufresne, Jill (EOIR)
Subject: FW: Judge (b) (6)

Jill,
I think this covers the case referenced in my earlier emails – I am going to close out the old case with "resolved per" one of the below. So...cancel my prior email inquiry!!
mtk

From: DuFresne, Jill (EOIR)
Sent: Monday, January 25, 2010 11:14 AM
To: Keller, Mary Beth (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: Judge (b) (6)

Dear Judge Keller, Please be advised that I have spoken today (1/25/10) to Judge (b) (6) with reference to a decision (b) (6) issued in the case of (b) (6). I advised (b) (6) that language (b) (6) used in that decision could potentially give the appearance of being appropriate and that (b) (6) should be careful of the language (b) (6) uses in future cases over which (b) (6) presides.

I also spoke to (b) (6) with reference to the case of (b) (6). In sustaining Judge (b) (6) decision, the BIA referred to utterances made by (b) (6) to the respondent that "...were more truculent than we would normally expect to see in removal proceedings.." I cautioned (b) (6) to be mindful of (b) (6) behavior in presiding over (b) (6) cases. Thank you. Jill H. Dufresne, Acting Assistant Chief Immigration Judge.

009868

10/28/2010