

(b) (5)

**From:** Weil, Jack (EOIR)  
**Sent:** Thursday, February 25, 2010 9:41 AM  
**To:** Smith, Gary (EOIR); Keller, Mary Beth (EOIR); Moutinho, Deborah (EOIR)  
**Cc:** O'Leary, Brian (EOIR); McGoings, Michael (EOIR); Kelly, Ed (EOIR)  
**Subject:** RE: IJC Memo - Matter of (b) (6) (February 4, 2010)

Gary,

The training that Judge [REDACTED] received previously related to temperament, bias, stress and anger management, communication skills, case management, legal resources, and organizational structure of DHS. A copy of the course agenda is attached. [REDACTED] willingly participated in the course and I believe the training has been effective.

The current referral from the Board appears to relate to a deficiency in a specific substantive area of the law; namely, the burdens of proof in asylum, withholding, and Convention Against Torture cases. This does not appear to be recidivist behavior or relate to the topics of the prior training.

(b) (5)

(b) (5) Specifically, I recommend that Judge (b) (6) be required to attend a two hour refresher training session on asylum, withholding, and Torture Convention law to be taught by ACIJ Romio via VTC. (b) (5)

(b) (5)

Thank you,  
 Jack

**From:** Smith, Gary (EOIR)  
**Sent:** Thursday, February 25, 2010 8:29 AM  
**To:** Keller, Mary Beth (EOIR); Moutinho, Deborah (EOIR)  
**Cc:** Weil, Jack (EOIR)  
**Subject:** FW: IJC Memo - Matter of (b) (6) (February 4, 2010)

I discussed this with Judge (b) (6) this morning (2-25-2010). (b) (6) was very concerned and said that (b) (6) had read over the decision carefully and also conferred with (b) (6) colleagues, particularly Judge (b) (6) (who is very conscientious). I told (b) (6) that (b) (6) needs to ensure that the boilerplate language (b) (6) is using in (b) (6) decisions is current, follows the IJ Bench Book templates and is accurate. (b) (6) recognized the misstatement (b) (6) had made in the decision and said (b) (6) should have referred to the "more likely than not" standard for withholding of removal. (b) (6) seemed to take this to heart and (b) (6) said (b) (6) would immediately do that. (b) (5)

(b) (5)

**From:** Smith, Gary (EOIR)  
**Sent:** Wednesday, February 24, 2010 3:36 PM  
**To:** Keller, Mary Beth (EOIR); Weil, Jack (EOIR)  
**Cc:** Moutinho, Deborah (EOIR)  
**Subject:** RE: IJC Memo - Matter of (b) (6) (February 4, 2010)

Judge (b) (6) issued this new decision about a little over a month after (b) (6) training week here in October 2008. I sent Judge Weil the attached note last week. Deborah provided me the ROP and I have read the decision. I anticipated we might receive this one. Any suggestions you have would be appreciated. I certainly will be sending this to Judge (b) (6) for (b) (6) review and perspective. Judge (b) (6) has read this decision (-708) and I expect (b) (6) is anticipating something coming back on this.

Alien Number	NTA Date	Appeal Type	BIA Decision Date	IJ Code	Base City	Decision File*	ACIJ Viewed?	CA Viewed?	IJ Viewed?
		Interlocutory Appeal							
		Case Appeal							
		Case Appeal							
		MTR BIA							
		Appeal of IJ MTR							
		Case Appeal							
		Case Appeal							
		MTR BIA							
		MTR BIA							
		Appeal of IJ MTR							
(b) (6)	01/30/1998	Case Appeal	02/04/2010	(b) (6)		Original PDF	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**From:** Moutinho, Deborah (EOIR)  
**Sent:** Wednesday, February 24, 2010 3:03 PM  
**To:** Smith, Gary (EOIR)  
**Subject:** FW: IJC Memo - Matter of (b) (6) (February 4, 2010)

This is the information regarding IJ (b) (6) in the data base – and (b) (6) attend the training on 10/21/2008 with ACIJ Weil.

*Per Oct. 2, 2008, CIJ memo to the Director, remedial measures will be taken to address the allegations made in the criticism of IJ (b) (6) while still under (b) (6) trial period. Judge (b) (6) will attend remedial training at Headquarters and will be re-evaluated to assess (b) (6) temperament and court management which will result in a final determination regarding (b) (6) retention.*

**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.

EXHIBIT  
A



38  
NOTICE OF HEARING IN REMOVAL PROCEEDINGS  
IMMIGRATION COURT

17-(b) (6)

Individual.  
G.S.

RE:

FILE

(b) (6)

(b) (6)

DATE: Oct 1, 2009

TO:

(b) (6)

Please take notice that the above captioned case has been scheduled for a  
Master/Individual hearing before the Immigration Court on \_\_\_\_\_  
at \_\_\_\_\_ at \_\_\_\_\_

(b) (6)

You may be represented in these proceedings, at no expense to the Government, by an attorney or other individual who is authorized and qualified to represent persons before an Immigration Court. Your hearing date has not been scheduled earlier than 10 days from the date of service of the Notice To Appear in order to permit you the opportunity to obtain an attorney or representative. If you wish to be represented, your attorney or representative must appear with you at the hearing prepared to proceed. You can request an earlier hearing in writing.

Failure to appear at your hearing except for exceptional circumstances may result in one or more of the following actions:

- 1) You may be taken into custody by the Department of Homeland Security and held for further action.
- 2) Your hearing may be held in your absence under section 240(b)(5) of the Immigration and Nationality Act. An order of removal will be entered against you if the Department of Homeland Security established by clear, unequivocal and convincing evidence that a) you or your attorney has been provided this notice and b) you are removable.

IF YOUR ADDRESS IS NOT LISTED ON THE NOTICE TO APPEAR, OR IF IT IS NOT CORRECT, WITHIN FIVE DAYS OF THIS NOTICE YOU MUST PROVIDE TO THE IMMIGRATION COURT LOS ANGELES, CA THE ATTACHED FORM EOIR-33 WITH YOUR ADDRESS AND/OR TELEPHONE NUMBER AT WHICH YOU CAN BE CONTACTED REGARDING THESE PROCEEDINGS. EVERYTIME YOU CHANGE YOUR ADDRESS AND/OR TELEPHONE NUMBER, YOU MUST INFORM THE COURT OF YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER WITHIN 5 DAYS OF THE CHANGE ON THE ATTACHED FORM EOIR-33. ADDITIONAL FORMS EOIR-33 CAN BE OBTAINED FROM THE COURT WHERE YOU ARE SCHEDULED TO APPEAR. IN THE EVENT YOU ARE UNABLE TO OBTAIN A FORM EOIR-33, YOU MAY PROVIDE THE COURT IN WRITING WITH YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER BUT YOU MUST CLEARLY MARK THE ENVELOPE "CHANGE OF ADDRESS." CORRESPONDENCE FROM THE COURT, INCLUDING HEARING NOTICES, WILL BE SENT TO THE MOST RECENT ADDRESS YOU HAVE PROVIDED, AND WILL BE CONSIDERED SUFFICIENT NOTICE TO YOU AND THESE PROCEEDINGS CAN GO FORWARD IN YOUR ABSENCE.

A List of Free Legal Service Providers has been given to you. For information regarding the status of your case, call toll free 1-800-898-7180 OR 703-305-1662.

# EXHIBIT B

(b) (6)

P.018

(b) (6)

NOTICE OF HEARING IN REMOVAL PROCEEDINGS  
IMMIGRATION COURT

(b) (6)

RE: (b) (6)  
FILE (b) (6)

DATE: Jul 7, 2009

TO:

(b) (6)

Please take notice that the above captioned case has been scheduled for a Master/Individual hearing before the Immigration Court on Aug 11 2009 at 8:00 at

(b) (6)

You may be represented in these proceedings, at no expense to the Government, by an attorney or other individual who is authorized and qualified to represent persons before an Immigration Court. Your hearing date has not been scheduled earlier than 10 days from the date of service of the Notice To Appear in order to permit you the opportunity to obtain an attorney or representative. If you wish to be represented, your attorney or representative must appear with you at the hearing prepared to proceed. You can request an earlier hearing in writing.

Failure to appear at your hearing except for exceptional circumstances may result in one or more of the following actions:

- 1) You may be taken into custody by the Department of Homeland Security and held for further action.
- 2) Your hearing may be held in your absence under section 240(b)(5) of the Immigration and Nationality Act. An order of removal will be entered against you if the Department of Homeland Security established by clear, unequivocal and convincing evidence that a) you or your attorney has been provided this notice and b) you are removable.

IF YOUR ADDRESS IS NOT LISTED ON THE NOTICE TO APPEAR, OR IF IT IS NOT CORRECT, WITHIN FIVE DAYS OF THIS NOTICE YOU MUST PROVIDE TO THE IMMIGRATION COURT LOS ANGELES, CA THE ATTACHED FORM EOIR-33 WITH YOUR ADDRESS AND/OR TELEPHONE NUMBER AT WHICH YOU CAN BE CONTACTED REGARDING THESE PROCEEDINGS. EVERYTIME YOU CHANGE YOUR ADDRESS AND/OR TELEPHONE NUMBER, YOU MUST INFORM THE COURT OF YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER WITHIN 5 DAYS OF THE CHANGE ON THE ATTACHED FORM EOIR-33. ADDITIONAL FORMS EOIR-33 CAN BE OBTAINED FROM THE COURT WHERE YOU ARE SCHEDULED TO APPEAR. IN THE EVENT YOU ARE UNABLE TO OBTAIN A FORM EOIR-33, YOU MAY PROVIDE THE COURT IN WRITING WITH YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER BUT YOU MUST CLEARLY MARK THE ENVELOPE "CHANGE OF ADDRESS." CORRESPONDENCE FROM THE COURT, INCLUDING HEARING NOTICES, WILL BE SENT TO THE MOST RECENT ADDRESS YOU HAVE PROVIDED, AND WILL BE CONSIDERED SUFFICIENT NOTICE TO YOU AND THESE PROCEEDINGS CAN GO FORWARD IN YOUR ABSENCE.

A List of Free Legal Service Providers has been given to you. For information regarding the status of your case, call toll free 1-800-898-7180 OR 703-305-1662.



merito  
JIMUNOZNOTICE OF HEARING IN REMOVAL PROCEEDINGS  
IMMIGRATION COURT

(b) (6)

RE: (b) (6)

FILE

DATE: Aug 11, 2009

TO:

(b) (6)

Please take notice that the above captioned case has been scheduled for a Master/Individual hearing before the Immigration Court on Oct 1 2009 at 1:00 PM at

(b) (6)

You may be represented in these proceedings, at no expense to the Government, by an attorney or other individual who is authorized and qualified to represent persons before an Immigration Court. Your hearing date has not been scheduled earlier than 10 days from the date of service of the Notice To Appear in order to permit you the opportunity to obtain an attorney or representative. If you wish to be represented, your attorney or representative must appear with you at the hearing prepared to proceed. You can request an earlier hearing in writing.

Failure to appear at your hearing except for exceptional circumstances may result in one or more of the following actions:

1) You may be taken into custody by the Department of Homeland Security and held for further action.

2) Your hearing may be held in your absence under section 240(b)(5) of the Immigration and Nationality Act. An order of removal will be entered against you if the Department of Homeland Security established by clear, unequivocal and convincing evidence that a) you or your attorney has been provided this notice and b) you are removable.

IF YOUR ADDRESS IS NOT LISTED ON THE NOTICE TO APPEAR, OR IF IT IS NOT CORRECT, WITHIN FIVE DAYS OF THIS NOTICE YOU MUST PROVIDE TO THE IMMIGRATION COURT LOS ANGELES, CA THE ATTACHED FORM EOIR-33 WITH YOUR ADDRESS AND/OR TELEPHONE NUMBER AT WHICH YOU CAN BE CONTACTED REGARDING THESE PROCEEDINGS. EVERYTIME YOU CHANGE YOUR ADDRESS AND/OR TELEPHONE NUMBER, YOU MUST INFORM THE COURT OF YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER WITHIN 5 DAYS OF THE CHANGE ON THE ATTACHED FORM EOIR-33. ADDITIONAL FORMS EOIR-33 CAN BE OBTAINED FROM THE COURT WHERE YOU ARE SCHEDULED TO APPEAR. IN THE EVENT YOU ARE UNABLE TO OBTAIN A FORM EOIR-33, YOU MAY PROVIDE THE COURT IN WRITING WITH YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER BUT YOU MUST CLEARLY MARK THE ENVELOPE "CHANGE OF ADDRESS." CORRESPONDENCE FROM THE COURT, INCLUDING HEARING NOTICES, WILL BE SENT TO THE MOST RECENT ADDRESS YOU HAVE PROVIDED, AND WILL BE CONSIDERED SUFFICIENT NOTICE TO YOU AND THESE PROCEEDINGS CAN GO FORWARD IN YOUR ABSENCE.

A List of Free Legal Service Providers has been given to you. For information regarding the status of your case, call toll free 1-800-898-7180 OR 703-305-1662.

EXHIBIT  
C

17-(b) (6)  
Handwritten signature

NOTICE OF HEARING IN REMOVAL PROCEEDINGS  
IMMIGRATION COURT

(b) (6)

RE: (b) (6)  
FILE (b) (6)

DATE: Nov 23, 2009

TO:

(b) (6)

Please take notice that the above captioned case has been scheduled for a Master/Individual hearing before the Immigration Court on Jan 11 2010 at 100 at 0070

(b) (6)

You may be represented in these proceedings, at no expense to the Government, by an attorney or other individual who is authorized and qualified to represent persons before an Immigration Court. Your hearing date has not been scheduled earlier than 10 days from the date of service of the Notice To Appear in order to permit you the opportunity to obtain an attorney or representative. If you wish to be represented, your attorney or representative must appear with you at the hearing prepared to proceed. You can request an earlier hearing in writing.

Failure to appear at your hearing except for exceptional circumstances may result in one or more of the following actions:

- 1) You may be taken into custody by the Department of Homeland Security and held for further action;
- 2) Your hearing may be held in your absence under section 240(b)(5) of the Immigration and Nationality Act. An order of removal will be entered against you if the Department of Homeland Security established by clear, unequivocal and convincing evidence that a) you or your attorney has been provided this notice and b) you are removable.

IF YOUR ADDRESS IS NOT LISTED ON THE NOTICE TO APPEAR, OR IF IT IS NOT CORRECT, WITHIN FIVE DAYS OF THIS NOTICE YOU MUST PROVIDE TO THE IMMIGRATION COURT LOS ANGELES, CA THE ATTACHED FORM EOIR-33 WITH YOUR ADDRESS AND/OR TELEPHONE NUMBER AT WHICH YOU CAN BE CONTACTED REGARDING THESE PROCEEDINGS. EVERYTIME YOU CHANGE YOUR ADDRESS AND/OR TELEPHONE NUMBER, YOU MUST INFORM THE COURT OF YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER WITHIN 5 DAYS OF THE CHANGE ON THE ATTACHED FORM EOIR-33. ADDITIONAL FORMS EOIR-33 CAN BE OBTAINED FROM THE COURT WHERE YOU ARE SCHEDULED TO APPEAR. IN THE EVENT YOU ARE UNABLE TO OBTAIN A FORM EOIR-33, YOU MAY PROVIDE THE COURT IN WRITING WITH YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER BUT YOU MUST CLEARLY MARK THE ENVELOPE "CHANGE OF ADDRESS." CORRESPONDENCE FROM THE COURT, INCLUDING HEARING NOTICES, WILL BE SENT TO THE MOST RECENT ADDRESS YOU HAVE PROVIDED, AND WILL BE CONSIDERED SUFFICIENT NOTICE TO YOU AND THESE PROCEEDINGS CAN GO FORWARD IN YOUR ABSENCE.

A List of Free Legal Service Providers has been given to you. For information regarding the status of your case, call toll free 1-800-898-7180 OR 703-305-1662.



Alien Number:

(b) (6)

Alien Name:

(b) (6)

## LIMITATIONS ON DISCRETIONARY RELIEF FOR FAILURE TO APPEAR

- ( ) 1. You have been scheduled for a removal hearing, at the time and place set forth on the attached sheet. Failure to appear for this hearing other than because of exceptional circumstances beyond your control\*\* will result in your being found ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. Below) for a period of ten (10) years after the date of entry of the final order of removal.
- ( ) 2. You have been scheduled for an asylum hearing, at the time and place set forth on the attached notice. Failure to appear for this hearing other than because of exceptional circumstances beyond your control\*\* will result in your being found ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. Below) for a period of ten (10) years from the date of your scheduled hearing.
- ( ) 3. You have been granted voluntary departure from the United States pursuant to section 240B of the Immigration and Nationality Act, and remaining in the United States beyond the authorized date other than because of exceptional circumstances beyond your control\*\* will result in your being ineligible for certain forms of relief under the Immigration and Nationality Act (see Section A. Below) for ten (10) years from the date of the scheduled departure or the date of unlawful reentry, respectively. Your voluntary departure bond, if any, will also be breached. Additionally, if you fail to voluntarily depart the United States within the time period specified, you shall be subject to a civil penalty of not less than \$1000 and not more than \$5000.
- ( ) 4. An order of removal has been entered against you. If you fail to appear pursuant to a final order of removal at the time and place ordered by the DHS, other than because of exceptional circumstances beyond your control\*\* you will not be eligible for certain forms of relief under the Immigration and Nationality Act (see Section A. below) for ten (10) years after the date you are scheduled to appear.

\*\*the term "exceptional circumstances" refers to circumstances such as serious illness of the alien or death of an immediate relative of the alien, but not including less compelling circumstances.

## A. THE FORMS OF RELIEF FROM REMOVAL FOR WHICH YOU WILL BECOME INELIGIBLE ARE:

- 1) Voluntary departure as provided for in section 240B of the Immigration and Nationality Act;
- 2) Cancellation of removal as provided for in section 240A of the Immigration and Nationality Act; and
- 3) Adjustment of status or change of status as provided for in Section 245, 248 or 249 of the Immigration and Nationality Act.

This written notice was provided to the alien in English. Oral notice of the contents of this notice must be given to the alien in his/her native language, or in a language understood by the alien, by the Immigration Judge.

Date: Nov 23, 2009

Immigration Judge:

(b) (6)

or Court Clerk:

SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)  
TO: [X] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [X] DHS  
DATE: 11-23-09 BY: COURT STAFF  
Attachments: [X] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

26



EXHIBIT  
D

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A (b) (6) Los Angeles, CA

Date: MAR 13 2009

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: (b) (6)

ON BEHALF OF DHS: (b) (6)

This case was last before us on April 13, 2006, at which time we remanded the record to the Immigration Judge for the entry of a new decision in connection with the respondent's applications for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), for protection under the Convention Against Torture (CAT), and for cancellation of removal pursuant to section 240A(b) of the Act, 8 U.S.C. § 1229b(b). Our order specifically requested that the Immigration Judge provide an explicit credibility finding, a determination as to whether the respondent's asylum application was timely filed, and an assessment of the respondent's eligibility for cancellation of removal. On remand, the Immigration Judge concluded in a decision dated October 17, 2007, that the respondent was not statutorily eligible for cancellation of removal, a finding the respondent has not appealed. The Immigration Judge then stated: "The Court will not revisit the asylum case but will follow the directive of the Board and grant the application." The Department of Homeland Security (DHS) appeals that decision.

Under 8 C.F.R. § 1003.1(d)(3), the Board defers to the factual findings of an Immigration Judge, unless they are clearly erroneous, but it retains independent judgment and discretion, subject to applicable governing standards, regarding pure questions of law and the application of a particular standard of law to those facts. *See Matter of A-S-B-*, 24 I&N Dec.493, 495-97 (BIA 2008).

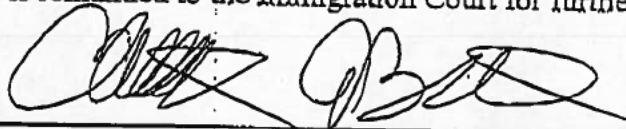
Although the Immigration Judge granted the respondent's application for asylum, (b) (6) written decision still did not include clear and complete factual findings and analysis as to whether the respondent (1) had presented a credible claim for asylum, withholding, and protection under the CAT; (2) had filed her asylum application within 1 year of her arrival in the United States or that "changed circumstances" or "extraordinary circumstances" justified any late filing; (3) had suffered mistreatment in Bangladesh and that such mistreatment rose to the level of "past persecution" and was inflicted on account of a ground protected under the Act; and/or (4) has a well-founded fear of future persecution in Bangladesh on account of a ground protected under the Act. Given our limited

(b) (6)

fact-finding ability on appeal, we will again remand the record to the Immigration Judge for the preparation of a more complete decision.<sup>1</sup> *See Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002).

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Court for further proceedings.



FOR THE BOARD

<sup>1</sup> Because the application of standards of law to particular facts would be within our independent judgment, *see Matter of A-S-B-*, *supra*, it would not be necessary to remand had the Immigration Judge's decision contained full findings of fact surrounding the filing of the asylum application and any past harm suffered or future harm that may be suffered by the respondent in Bangladesh.



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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

Files:

(b) (6)

Date:

MAR 14 2008

In re:

(b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: (b) (6)

ON BEHALF OF DHS:

(b) (6)

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] -  
In the United States in violation of law (both respondents)

APPLICATION: Asylum; withholding of removal; protection under the Torture Convention

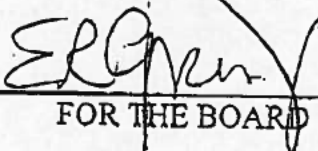
In a decision dated March 18, 2004, the Immigration Judge found the respondents subject to removal as charged, denied their applications for asylum, withholding of removal and for protection under the Torture Convention and ordered them removed. The respondents appealed from that decision and in a decision dated September 26, 2005, the Board remanded proceedings for further consideration of the respondents' application for relief from removal. In a decision dated March 17, 2006, the Immigration Judge granted the respondents' request for asylum. The Department of Homeland Security (DHS) has appealed from that decision. The appeal will be sustained and the record will be remanded.

In (b) (6) March 18, 2004, decision the Immigration Judge, in considering the female respondent's request for asylum, concluded that she was not credible and that the actions of her alleged persecutors were not "on account of" any of the grounds enumerated in Section 101 (a)(42) of the Immigration and Naturalization Act. On appeal, the Board remanded proceedings for the Immigration Judge to assess the credibility of the respondent pursuant to the precedent decisions of the United States Court of Appeals for the (b) (6) Circuit. The Board also instructed the Immigration Judge to further consider the respondents' asylum claim in light of prevailing law and that "both parties should be allowed to provide further evidence regarding the respondents's eligibility for asylum and for withholding of removal . . . and to submit (evidence regarding) updated country conditions". (BIA at 2).

(b) (6)

Upon remand, the Immigration Judge issued an abbreviated decision finding, without explanation or analysis, that the respondents both were credible and that they had demonstrated eligibility for asylum. The record reflects that, while the Immigration Judge accepted into evidence documentation from DHS concerning current country conditions in India, the Immigration Judge did not consider or discuss such evidence. Notably, the Immigration Judge did not attempt to distinguish (b) (6) prior finding that even if the respondents were eligible they had failed to demonstrate past persecution on account of a protected ground. It is well-established that an Immigration Judge must identify and fully explain the reasons for his or her decision so that the parties are provided a fair opportunity to contest the Immigration Judge's determination on appeal and so that the Board is able to meaningfully exercise its responsibility to review the decision. *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994); *see also Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999). In the present case, the Immigration Judge has not stated any rationale for (b) (6) March 17, 2006, decision and has not complied with the Board mandate, stated in its September 26, 2005, decision to consider current country conditions in India. We shall therefore sustain the DHS appeal and remand proceedings so that the Immigration Judge can fully consider the respondents' case in accordance with the September 26, 2005, decision and provide a full analysis of those issues.

ORDER: The appeal is sustained and the record is remanded for further proceedings consistent with the foregoing decision.

  
FOR THE BOARD



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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

Files:

(b) (6)

Date:

SEP 2-8 2007

In re:

(b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS:

(b) (6)

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -  
Present without being admitted or paroled (all respondents)

APPLICATION: Asylum; withholding of removal; Convention Against Torture

This case was last before the Board on July 8, 2005, when we affirmed the Immigration Judge's February 25, 2004, decision denying the respondents' applications for asylum, withholding of removal, and request for protection under the Convention Against Torture ("CAT").<sup>1</sup> On January 8, 2007, the United States Court of Appeals for the (b) (6) Circuit granted the parties' joint motion to remand to consider all of the evidence of record regarding the respondents' credibility with respect to past persecution and fear of future political and religious persecution, to articulate fully the bases for our findings, including but not limited to an individualized assessment of country conditions, and to include findings as to the respondents' CAT claim. We assume that the court is requesting greater detail than in our previous July 8, 2005, decision which was a summary affirmance and did not provide reasons for affirming the Immigration Judge's denial of relief.

The Immigration Judge found reason to question the veracity of the respondents based on a fraudulent document submitted in corroboration of the lead respondents's claim (I.J. at 7-8). The lead respondent submitted a document which was purportedly an arrest report corroborating his arrest at a police checkpoint in January 1994 (Exhs. 7A, 7B). However, an overseas investigation by the Department of Homeland Security revealed that document to be fraudulent, and the respondent was unable to provide any convincing explanation to refute the results of the overseas investigation (Exh. 11). Fraudulent documents that go to the heart of an alien's claim of persecution,

<sup>1</sup> The lead respondent's wife and minor son are derivatives of his asylum claim. See section 208(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1), and 8 C.F.R. § 1208.13(a) (2007).

(b) (6)

such as the fraudulent police report, can support an adverse credibility finding. See (b) (6) v. Ashcroft, (b) (6) Cir. 2004) (alien submitted fraudulent documents to support alleged membership in political organizations, which was the basis for his claim). However, we note that the Immigration Judge did not identify any inconsistencies in the respondents' testimony or between their testimony and the written statement of the lead respondent, and it is unclear whether the submission of the fraudulent document is the sole basis for (b) (6) questioning the veracity of the lead respondent's claim.

The Immigration Judge also rendered an alternative finding, that, even if credible, the evidence of changed country conditions in the record was sufficient to rebut any presumption of a well-founded fear of persecution. In finding that a presumption of a well-founded fear of future persecution had been rebutted by evidence of changed country conditions, the Immigration Judge relied on the general information of country conditions contained in the record, noting in particular the information contained in the 2000 and 2001 U.S. Department of State Country Reports on Human Rights Practices for India (I.J. at 8-10; Exhs. 8, 9). The (b) (6) Circuit, however, has required an "individualized analysis" of how changed conditions will affect an asylum applicant's specific situation. (b) (6) v. INS, (b) (6) Cir. 1998) (quoting (b) (6) v. INS, (b) (6) Cir. 1996). Information about general changes in the country is not sufficient. *Id.* See also (b) (6) v. Ashcroft, (b) (6) Cir. 2003). Accordingly, we find it necessary to remand the proceedings to the Immigration Judge in order that an individualized analysis of how the changed conditions in India specifically affect the respondents' situation. We note that nearly 3 years has passed since the Immigration Judge's decision and over 5 years since the date of the last country report of record. Accordingly, we will provide the parties with an opportunity to update the record and for further analysis of country conditions in India and the respondents' fear of returning there.

We also find it necessary to remand the record of proceedings to the Immigration Judge for consideration of the lead respondent's application for CAT relief, which was not addressed in (b) (6) February 25, 2004, decision.<sup>2</sup> See (b) (6) v. INS, (b) (6) Cir. 2001). The applicable regulations require that all relevant evidence be considered in determining the likelihood of future torture, including evidence of past torture as well as conditions in the country that would increase the likelihood of future torture. See 8 C.F.R. § 1208.18. Additionally, the Immigration Judge should render an explicit credibility finding that comports with the standards articulated by the United States Court of Appeals for the (b) (6) Circuit. We will therefore remand for further analysis by the Immigration Judge of the lead respondent's claim, including the taking of any further evidence from the parties, if warranted, and any necessary additional fact-finding to resolve the case. See, e.g., (b) (6) v. INS, (b) (6) Cir. 2004); see also (b) (6) v. Gonzales, (b) (6) Cir. 2005). Accordingly, the decision of the Board dated July 8, 2005, is vacated and the record is remanded to the Immigration Judge for further proceedings consistent with this decision.

ORDER: The Board's July 8, 2005, decision is vacated.

<sup>2</sup> We note that the Convention Against Torture does not afford a derivative form of relief.



A (b) (6)

FURTHER ORDER: The record of proceedings is remanded for further proceedings consistent with this order.

  
FOR THE BOARD

EXHIBIT  
E

## IMMIGRATION COURT

(b) (6)

In the Matter of: (b) (6)

Case No.: (b) (6)

Respondent

IN REMOVAL PROCEEDINGS

## ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on January 11, 2010.

This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

- ☐ The respondent was ordered removed from the United States to \_\_\_\_\_ or in the alternative to \_\_\_\_\_.
- ☐ Respondent's application for voluntary departure was denied and respondent was ordered removed to \_\_\_\_\_ or in the alternative to \_\_\_\_\_.
- ☐ Respondent's application for voluntary departure was granted until \_\_\_\_\_ upon posting a bond in the amount of \$ \_\_\_\_\_ with an alternative order of removal to \_\_\_\_\_.

Respondent's application for:

- ☒ Asylum was ~~( )~~ granted ☐ denied ☐ withdrawn ☐ other.
- ☒ Withholding of removal was ~~( )~~ granted ☐ denied ☐ withdrawn ☐ other.
- ☒ Respondent's application for ☐ withholding of removal ☐ deferral of removal under Article III of the Convention Against Torture was ~~( )~~ granted ☐ denied ☐ withdrawn ☐ other.
- ☐ A Waiver under section \_\_\_\_\_ was ☐ granted ☐ denied ☐ withdrawn ☐ other.
- ☐ Cancellation of removal under section 240A(a) was ☐ granted ☐ denied ☐ withdrawn ☐ other.

Respondent's application for:

- ☐ Cancellation under section 240A(b)(1) was ☐ granted ☐ denied ☐ withdrawn ☐ other. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
- ☐ Cancellation under section 240A(b)(2) was ☐ granted ☐ denied ☐ withdrawn ☐ other. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
- ☐ Adjustment of Status under section \_\_\_\_\_ was ☐ granted ☐ denied ☐ withdrawn ☐ other. If granted, it was ordered that respondent be issued all appropriate documents necessary to give effect to this order.
- ☐ Respondent's status was rescinded under section 246.
- ☐ Respondent is admitted to the United States as a \_\_\_\_\_ until \_\_\_\_\_.
- ☐ As a condition of admission, respondent is to post a \$ \_\_\_\_\_ bond.
- ☐ Respondent knowingly filed a frivolous asylum application after proper notice.
- ☐ Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.
- ☐ Proceedings were terminated.
- ☐ Other: \_\_\_\_\_

Date: January 11, 2010

(b) (6)

Immigration Judge

Appeal waived Reserved: A / I / B

Appeal due by: 11/11/10

## CERTIFICATE OF SERVICE

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

TO: ☐ ALIEN ☐ ALIEN c/o Custodial Officer ☐ ALIEN's ATT/REP ☒ DHS

DATE: 01/11/2010 BY: COURT STAFF

Attachments: ☐ EOIR-33 ☐ EOIR-28 ☐ Legal Services List ☐ Other Q6

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE OF IMMIGRATION REVIEW

(b) (6)

In The Matter Of:

) FILE NO.: A (b) (6)

(b) (6)

) ORDER OF IMMIGRATION JUDGE

Respondent.

Upon consideration of the Respondent, (b) (6)

"Motion and Request that I.J. (b) (6) recuse (b) (6) on this matter,

IT IS HEREBY ORDERED that the Motion be:

\_\_\_\_\_ GRANTED \_\_\_\_\_ DENIED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
HONORABLE JUDGE FONG



## PROOF OF SERVICE

(b) (6)

## PROOF OF SERVICE

I, (b) (6) Esq., employed in the county of (b) (6) I am over the age of 18 and not a party to the within action. My business address is still (b) (6)

On January 13, 2010, I served a copy of this COMPLAINT TO CHIEF JUDGE THOMAS FONG AND REQUEST THAT I, (b) (6) REFUSE (b) (6) ON THIS MATTER on the interested parties, as follows:

UNITED STATES DEPARTMENT OF JUSTICE (PERSONALLY DELIVERED)  
IMMIGRATION COURT  
ATTN: CHIEF IMMIGRATION JUDGE - THOMAS FONG

(b) (6)

UNITED STATES DEPARTMENT OF JUSTICE (PERSONALLY DELIVERED)  
IMMIGRATION COURT

ATTN: IMMIGRATION JUDGE (b) (6)

(b) (6)

UNITED STATES HOMELAND SECURITY (PERSONALLY DELIVERED)  
ATTN: OFFICE OF CHIEF COUNSEL

(b) (6)

Executed on January 13, 2010, at (b) (6)

☒ I declare under penalty of perjury and the laws of (b) (6) that the foregoing is true and correct.

☐ I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

(b) (6)

PROOF OF SERVICE - 1



**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

March 17, 2010

**MEMORANDUM**

TO: Thomas G. Snow  
Acting Director

FROM: Brian M. O'Leary *Brian M. O'Leary*  
Chief Immigration Judge

SUBJECT: Response to Complaint Against IJ (b) (6)

On March 8, 2010, the (b) (6) ran a story entitled (b) (6). According to the story, the (b) (6) a program of (b) (6) that provides free representation to some detained minors in removal proceedings, lodged a formal complaint about the demeanor of (b) (6) a (b) (6) immigration judge, who it says is rude and intemperate in cases involving unaccompanied children (juveniles). In a January, 2010 letter, the group's program director, (b) (6) said (b) (6) has engaged in a (b) (6) toward detained, unrepresented children. The reporter conceded in the article that she sat in Judge (b) (6) court for nearly a month *and* did not witness extreme behavior of the sort the group complained about. The article noted that the group contacted Judge (b) (6) supervisor, Assistant Chief Immigration Judge (ACIJ) Thomas Y.K. Fong, who has met on a number of occasions with advocates to hear their complaints.

The Office of the Chief Immigration Judge (OCIJ) acted on (b) (6) concerns even prior to the publication of these articles. During the week of December 14, 2009, ACIJ Fong became aware of the of the (b) (6) complaint and began reviewing Records of Proceedings (ROP's). During his performance work plan progress review discussion with Judge (b) (6) on January 6, 2010, he discussed proper judicial demeanor, including both verbal and non-verbal characteristics.

On January 29, ACIJ Fong communicated with (b) (6) informing her that he had counseled Judge (b) (6) and obtained her agreement to allow time to see if the counseling produced the desired results. ACIJ Fong was in Falls Church, Virginia, during the weeks of February 1 and February 15 as part of the Immigration Judge application review initiative. Upon

his return to (b) (6) he observed Judge (b) (6) in court on February 17 conducting the juvenile docket. On February 17 and 18, ACIJ Fong further counseled Judge (b) (6) on what he observed.

ACIJ Fong continued to monitor the situation, and had several telephone and personal meetings with (b) (6) during the months of December, January and February. For example, on February 24, ACIJ Fong had discussions with (b) (6) and the attorney representing juveniles from her organization before Judge (b) (6). Both persons confirmed that things "had improved" in Judge (b) (6) courtroom.

On February 24, 2010 a coordination and training session was held in the (b) (6) immigration court with local non-governmental organizations (NGO's) and Department of Homeland Security (DHS) personnel. The meeting produced a need for better information sharing and coordination by the NGO's on juvenile cases; a better understanding by all stakeholders as to their roles; what an immigration judge needs to make timely and expeditious adjudications and to rule on motions for continuances; and the creation of new, consolidated, standardized form entitled (b) (6). This form will be provided by the Office of Refugee Resettlement (ORR) and updated at each hearing. It provides, among other things, information on the estimated date of juvenile's release, any referrals for physical or mental treatment, the type of relief being sought in immigration court, sponsorship information and status; and case worker/attorney/friend of the court contact names. All of this is designed to provide information to the immigration judge prior to the hearing and reduce the need for questioning the juvenile. On March 14, 2010, during a meeting between ACIJ Fong and the Federal Field Specialist representative from ORR, the form was finalized. Lastly, even prior to this finalization, on March 4, 2010, at ACIJ Fong's direction, Judge (b) (6) completed an on-line training course entitled (b) (6). (b) (6) Anger Management: Living and Leading in Emotional Balance."

As is apparent from the dates listed above, corrective action preceded the newspaper article. Moreover, the gravamen of the complaint has been addressed in a comprehensive manner, and the complainant (b) (6) conceded that the situation has improved. It is unfortunate that the reporter chose to publish a stale story in an incomplete manner.

A follow-up article entitled (b) (6) was published on March 10, 2010. That article documents a complaint filed by attorney (b) (6) concerning the judge's alleged failure to notify him or his detained adult client of the location of a hearing, and then did not respond appropriately after he voiced his concern. ACIJ Fong is investigating this allegation but his preliminary review so far has not found substance to the allegations made against Judge (b) (6).



**Smith, Gary (EOIR)**

**From:** Smith, Gary (EOIR)  
**Sent:** Sunday, January 03, 2010 4:31 PM  
**To:** Keller, Mary Beth (EOIR)  
**Subject:** RE: (b) (6) BIA DENIAL- TIME FOR (b) (6) CIRCUIT 30 DAYS- ARGUMENTS- BIA IGNORED EVIDENCE OF RECORD, USED WRONG STD FOR TORTURE, WRONG STD FOR PREVIOUSLY UNAVAILABLE EVIDENCE, ENGAGED IN FACT-FINDING/ SPECULATION/CONJECTURE RE FAMILY TO PROVIDE MEDS

I had never seen this before you sent the various emails last week. The attorney seems more focused on the BIA's decision. I will review the oral decision and Matter of S-H-. Judge (b) (6) was on video detail to (b) (6) the week of June 7<sup>th</sup>.

---

**From:** Keller, Mary Beth (EOIR)  
**Sent:** Monday, December 28, 2009 3:24 PM  
**To:** Smith, Gary (EOIR)  
**Subject:** FW: (b) (6) BIA DENIAL- TIME FOR (b) (6) CIRCUIT 30 DAYS- ARGUMENTS- BIA IGNORED EVIDENCE OF RECORD, USED WRONG STD FOR TORTURE, WRONG STD FOR PREVIOUSLY UNAVAILABLE EVIDENCE, ENGAGED IN FACT-FINDING/ SPECULATION/CONJECTURE RE FAMILY TO PROVIDE MEDS

Gary,

This came in some time ago, mostly relates to complaint regarding the BIA, which I forwarded to David Neal back then. Complaint regarding the judge is more about being inconsistent w/ S-H- and weak. (b)(5) & Non-Responsive

(b)(5) & Non-Responsive

forwarding for your review, in the event that you see something that needs a comment or something. (b)(5) & Non-Responsive

(b)(5) & Non-Responsive

mtk

---

**From:** (b) (6)  
**Sent:** Sunday, November 08, 2009 12:06 AM  
**To:** Keller, Mary Beth (EOIR)  
**Subject:** FW: (b) (6) BIA DENIAL- TIME FOR FIFTH CIRCUIT 30 DAYS- ARGUMENTS- BIA IGNORED EVIDENCE OF RECORD, USED WRONG STD FOR TORTURE, WRONG STD FOR PREVIOUSLY UNAVAILABLE EVIDENCE, ENGAGED IN FACT-FINDING/ SPECULATION/CONJECTURE RE FAMILY TO PROVIDE MEDS

Mary Beth, feel free to look at record and medical expert's affidavit, we will be need to be back with media, congress, NGOs, etc if necessary since this is a travesty based on evidence submitted correlating male HIV with imputed gays in Jamaica, etc. I don't know which staff esq was responsible for writing this but he/she may have not read emphasis added to affidavits and briefs to show total picture. This was one of the more defective BIA decisions I have seen of late lacking reasoning e.g. why was affidavit previously available when he was pro se detainee in (b)(6) suffering from AIDS, pancreatic cancer and shingles? I'd like to know how such similarly situated pro se detainees can identify and secure expert witnesses and make them available. Best, happy weekend, thankfully, it is the Obama era, more transparency, accountability, responsibility even w/i BIA corps. Best,

(b) (6)

Senior Counsel

(b) (6)

## 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)  
[thomas.fong@usdoj.gov](mailto:thomas.fong@usdoj.gov)

---

**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 - (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.

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)  
[thomas.fong@usdoj.gov](mailto:thomas.fong@usdoj.gov)

---

**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*

(b) (6)

Notice to Alien Ordered Removed/Departure Verification

File No: (b) (6)

Date: Mar 25, 2005

Alien's Full Name: (b) (6)

You have been found to be inadmissible to the United States under the provisions of section 212(a) of the Immigration and Nationality Act (Act) or deportable under the provisions of section 237 of the Act as a Visa Waiver Pilot Program violator. In accordance with the provisions of section 212(a)(9) of the Act, you are prohibited from entering, attempting to enter, or being in the United States:

- ☐ for a period of 5 years from the date of your departure from the United States as a consequence of your having been found inadmissible as an arriving alien in proceedings under section 235(b)(1) or 240 of the Act.
- ☐ for a period of 10 years from the date of your departure from the United States as a consequence of your having been ordered removed in proceedings under any section of the Act other than section 235(b)(1) or 240, or of your having been ordered excluded under section 236 of the Act in proceedings commenced prior to April 1, 1997.
- ☐ for a period of 20 years from the date of your departure from the United States as a consequence of your having been found inadmissible and of your having been previously excluded, deported, or removed from the United States.

~~xxx~~ at any time because in addition to having been found inadmissible, you have been convicted of a crime designated as an aggravated felony.

After your deportation or removal has been effected, if you desire to reenter the United States within the period during which you are barred, you must request and obtain permission from the Attorney General to reapply for admission into the United States. You must obtain such permission prior to commencing your travel to the United States. Application forms for requesting such permission may be obtained by contacting any United States Consulate or office of the United States Immigration and Naturalization Service.

**WARNING:** Title 8 United States Code, Section 1326 provides that it is a crime for an alien who has been removed from the United States to enter, attempt to enter, or be found in the United States without the Attorney General's express consent. Any alien who violates this section of law is subject to prosecution for a felony. Depending on the circumstances of the removal, conviction could result in a sentence of imprisonment for a period of from 2 to 20 years and/or a fine of up to \$250,000.

(b) (6)

Verification of Removal  
(Complete this section for file copy only)

(b) (6)

(b) (6)

(b) (6)

THE STATE OF

(b) (6)

v.

(b) (6)

§  
§  
§  
§  
§  
§  
§

(b) (6)

NUNC PRO TUNC

JUDGMENT OF CONVICTION BY COURT—WAIVER OF JURY TRIAL

Judge Presiding:

(b) (6)

Date Judgment  
Entered:

(b) (6)

Attorney for State:

Attorney for  
Defendant:

Offense for which Defendant Convicted:

CLASS "A" ASSAULT, A LESSER INCLUDED

Charging Instrument:

INDICTMENT

Statute for Offense:

(b) (6)

Date of Offense:

11/3/1999

Degree of Offense:

CLASS A MISDEMEANOR

Plea to Offense:

GUILTY

Findings on Deadly Weapon:

N/A

Terms of Plea Bargain:

OPEN BEFORE COURT

Plea to 1<sup>st</sup> Enhancement

Paragraph:

N/A

Plea to 2<sup>nd</sup> Enhancement/Habitual

Paragraph:

N/A

Findings on 1<sup>st</sup> Enhancement

Paragraph:

N/A

Findings on 2<sup>nd</sup>

Enhancement/Habitual Paragraph:

N/A

Date Sentence

Imposed:

12/20/2000

Date Sentence to

Commence:

12/20/2000

Punishment and Place

of Confinement:

THIRTY (30) DAYS COUNTY JAIL

THIS SENTENCE SHALL RUN CONCURRENTLY.

☐ SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A YEARS.

Fine:

\$ N/A

Court Costs:

\$

Restitution:

\$ N/A

Restitution Payable to:

☐ VICTIM (see below) ☐ AGENCY/AGENT (see below)

Sex Offender Registration Requirements do not apply to the Defendant.

(b) (6)

The age of the victim at the time of the offense was N/A years.

If Defendant is to serve sentence in (b) (6) enter incarceration periods in chronological order.

From \_\_\_\_\_ to \_\_\_\_\_ From \_\_\_\_\_ to \_\_\_\_\_ From \_\_\_\_\_ to \_\_\_\_\_

Time

Credited:

From \_\_\_\_\_ to \_\_\_\_\_ From \_\_\_\_\_ to \_\_\_\_\_ From \_\_\_\_\_ to \_\_\_\_\_

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

N/A DAYS NOTES: N/A

3440

2163

010205

(b) (6)



(b) (6)

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in (b) (6) The State appeared by her District Attorney.

**Counsel / Waiver of Counsel (select one)**

- ☒ Defendant appeared in person with Counsel.  
☐ Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

Both parties announced ready for trial. Defendant waived the right of trial by jury and entered the plea indicated above. The Court then admonished Defendant as required by law. It appeared to the Court that Defendant was mentally competent to stand trial, made the plea freely and voluntarily, and was aware of the consequences of this plea. The Court received the plea and entered it of record. Having heard the evidence submitted, the Court found Defendant guilty of the offense indicated above. In the presence of Defendant, the Court pronounced sentence against Defendant.

The Court FINDS Defendant committed the above offense and **ORDERS, ADJUDGES AND DECREES** that Defendant is **GUILTY** of the above offense. The Court FINDS the Presentence Investigation, if so ordered, was done according to the applicable provisions of (b) (6)

The Court **ORDERS** Defendant punished as indicated above. The Court **ORDERS** Defendant to pay all fines, court costs, and restitution as indicated above.

**Punishment Options (select one)**

- ☐ **Confinement in State Jail or Institutional Division.** The Court **ORDERS** the authorized agent of the State (b) (6) the Sheriff of this County to take, safely convey, and deliver Defendant to the Director, Institutional Division, (b) (6) Court **ORDERS** Defendant to be confined for the period and in the manner indicated above. The Court **ORDERS** Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court **ORDERS** that upon release from confinement, Defendant proceed immediately to the (b) (6) District Clerk. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.
- ☒ **County Jail—Confinement / Confinement in Lieu of Payment.** The Court **ORDERS** Defendant immediately committed to the custody of the Sheriff of (b) (6) on the date the sentence is to commence. Defendant shall be confined in the (b) (6) County Jail for the period indicated above. The Court **ORDERS** that upon release from confinement, Defendant shall proceed immediately to the (b) (6) County District Clerk. Once there, the Court **ORDERS** Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.
- ☐ **Fine Only Payment.** The punishment assessed against Defendant is for a **FINE ONLY**. The Court **ORDERS** Defendant to proceed immediately to the Office of the (b) (6) County District Clerk. Once there, the Court **ORDERS** Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

**Execution / Suspension of Sentence (select one)**

- ☒ The Court **ORDERS** Defendant's sentence **EXECUTED**.  
☐ The Court **ORDERS** Defendant's sentence of confinement **SUSPENDED**. The Court **ORDERS** Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court **ORDERS** that Defendant is given credit noted above on this sentence for the time spent incarcerated.

It is further **ORDERED** that the cost to (b) (6) County for the payment of this defendant's court-appointed attorney, if any, is **taxed** against this defendant as court cost. The District Clerk is granted leave to amend the court cost to reflect this amount without the necessity of a further order.

Following the disposition of this cause, the defendant's fingerprints were, in open court, placed upon a Judgment Certificate of Defendant's Prints. Said Certificate is attached hereto and is incorporated by reference as a part of this Judgment.



(b) (6)

Furthermore, the following special findings or orders apply:

Signed on the 25 day of November, 2007

(b) (6)

Judge Presiding

\_\_\_\_\_  
PRINTED NAME

If sitting for Presiding Judge

Clerk:

(b) (6)

**JUDGMENT ON PLEA OF GUILTY OR NOLO CONTENDERE  
BEFORE COURT - WAIVER OF JURY TRIAL - NO COMMUNITY SUPERVISION**

Judge Presiding: (b) (6) : Date of Judgment: **December 20, 2000**

Attorney for State: (b) (6) Attorney for Defendant: (b) (6)

Offense Convicted of: **Assault of a Public Servant** Date Offense Committed: **November 3, 1999**

Degree: (b) (6)

Charging Instrument: **Indictment** Plea: **Open**

Terms of Plea Bargain: **Thirty (30) days** confinement in the (b) (6) County Jail pursuant to Art. (b) (6) Penal Code

Plea to Enhancement Paragraph(s): **Not Applicable** Findings on Enhancement: **Not Applicable**

Findings on use of Deadly Weapon: **Not Applicable**

Date Sentence Imposed: **December 20, 2000** Costs: **301.89 Instant**

Punishment and Place of Confinement: **Thirty (30) days** confinement in the (b) (6) County Jail pursuant to Art. (b) (6) Penal Code Date to Commence: **December 20, 2000**

Time Credited: **36 days** Total amount of Restitution/Reparation: **-0-**  
(to be paid as a term and condition of parole)

Concurrent Unless Otherwise Specified: Restitution to be Paid To:  
Name: **Not Applicable**  
Address:

**ON THIS DAY** set forth above, this cause came on for trial. The State of (b) (6) appeared by the above-named attorney, and the defendant appeared in person in open court with the above-

**JUDGMENT-PELA TO COURT-NO COMMUNITY SUPERVISION**

named attorney for the defendant. Both parties having pronounced ready for trial. WHEREUPON, the defendant in person and in writing and with the approval of the attorney for the defendant in open court agreed to waive a jury in the trial of this cause and submit the same to the court, such waiver being joined and consented to by the attorney for the State; and the court approved the same.

**THEREAFTER**, the defendant was arraigned on the offense shown above: and entered, a plea as shown above, as well as a plea to each enhancement paragraph, if any as shown above; or, if shown above, the attorney for the State waived one or more such paragraphs.

**THEREUPON**, it having appeared to the court that the defendant has a sufficient understanding of the English language, either by the defendant's own hearing and knowledge or through a proper translator, and that the defendant is mentally competent, the court duly admonished the defendant as the consequences of such plea or plea as shown above. The court having further determined that the defendant is uninfluenced in making said plea by any consideration of fear or by any persuasion of delusive hope of pardon prompting the said defendant to confess guilt, and seeing that the defendant persisted in entering such plea, the court finds such plea to be free and voluntary and accepts same to be entered of record herein.

**WHEREFORE**, the defendant in open court and in writing with the express approval of the attorney for the defendant, having waived the reading of the instrument charging the offense shown above and the appearance and the right to confront and cross-examination witnesses against the defendant, and having agreed evidence in this cause may be stipulated and the introduction of such consented to in the form of affidavits, written statements, and any other documentary evidence, such waiver and consent having been approved by the court and filed in the papers of this cause, the court, having heard the defendant's plea, the evidence submitted, and the arguments of counsel, is of the opinion, and so finds that the defendant is guilty as charged of the offense set forth above and that the enhancement paragraphs, if any, not previously waived by the State are true or not true as shown above.

**IT IS THEREFORE CONSIDERED AND ORDERED** by the court, in the presence of defendant, that said judgment to be, and the same is hereby, in all things approved and confirmed; and following a proper waiver of a jury in accordance with law, that said defendant is adjudged guilty of the offense as set forth above, and which offense was committed on the date shown above, and that if findings of true are shown above as to enhancement paragraphs, the said defendant is also adjudged to be a repeat or habitual felony offender, as charged, and that said defendant be punished in accordance with terms set forth above; and that said defendant having been asked by the court if the defendant had anything to say in law why sentence should not be pronounced against the defendant, and answered nothing in bar thereof, the said defendant is hereby sentenced to a term of imprisonment or fine, or both, as set forth above; and that said defendant is hereby sentenced to a term of imprisonment or fine, or both, as set forth above; and that said defendant be delivered to the Sheriff of (b) (6) or other person legally authorized to receive such convict for the particular punishment assessed herein.

**THE COURT FURTHER FINDS**, if shown above, that the defendant used or exhibited a deadly weapon during the commission of the offense shown above, or during immediate flight therefrom.

(b) (6)

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in (b) (6) The State appeared by her District Attorney.

**Counsel / Waiver of Counsel (select one)**

- ☒ Defendant appeared in person with Counsel.  
☐ Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

Both parties announced ready for trial. Defendant waived the right of trial by jury and entered the plea indicated above. The Court then admonished Defendant as required by law. It appeared to the Court that Defendant was mentally competent to stand trial, made the plea freely and voluntarily, and was aware of the consequences of this plea. The Court received the plea and entered it of record. Having heard the evidence submitted, the Court found Defendant guilty of the offense indicated above. In the presence of Defendant, the Court pronounced sentence against Defendant.

The Court FINDS Defendant committed the above offense and ORDERS, ADJUDGES AND DECREES that Defendant is GUILTY of the above offense. The Court FINDS the Presentence Investigation, if so ordered, was done according to the applicable provisions of (b) (6)

The Court ORDERS Defendant punished as indicated above. The Court ORDERS Defendant to pay all fines, court costs, and restitution as indicated above.

**Punishment Options (select one)**

☐ **Confinement in State Jail or Institutional Division.** The Court ORDERS the authorized agent of the State (b) (6) the Sheriff of this County to take, safely convey, and deliver Defendant to the Director, Institutional Division (b) (6) The Court ORDERS Defendant to be confined for the period and in the manner indicated above. The Court ORDERS Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court ORDERS that upon release from confinement, Defendant proceed immediately to the (b) (6) County District Clerk. Once there, the Court ORDERS Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☒ **County Jail—Confinement / Confinement in Lieu of Payment.** The Court ORDERS Defendant immediately committed to the custody of the Sheriff of (b) (6) on the date the sentence is to commence. Defendant shall be confined in the (b) (6) County Jail for the period indicated above. The Court ORDERS that upon release from confinement, Defendant shall proceed immediately to the (b) (6) County District Clerk. Once there, the Court ORDERS Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

☐ **Fine Only Payment.** The punishment assessed against Defendant is for a FINE ONLY. The Court ORDERS Defendant to proceed immediately to the Office of the (b) (6) County District Clerk. Once there, the Court ORDERS Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

**Execution / Suspension of Sentence (select one)**

- ☒ The Court ORDERS Defendant's sentence EXECUTED.  
☐ The Court ORDERS Defendant's sentence of confinement SUSPENDED. The Court ORDERS Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court ORDERS that Defendant is given credit noted above on this sentence for the time spent incarcerated.

It is further ORDERED that the cost to (b) (6) County for the payment of this defendant's court-appointed attorney, if any, is taxed against this defendant as court cost. The District Clerk is granted leave to amend the court cost to reflect this amount without the necessity of a further order.

Following the disposition of this cause, the defendant's fingerprints were, in open court, placed upon a Judgment Certificate of Defendant's Prints. Said Certificate is attached hereto and is incorporated by reference as a part of this Judgment.

(b) (6)

Furthermore, the following special findings or orders apply:

Signed on the 25 day of January, 2007

(b) (6)

Judge Presiding

\_\_\_\_\_  
PRINTED NAME

If sitting for Presiding Judge

Clerk:



**February 2, 2006**

(b) (6)

Community Supervision and Corrections Department

(b) (6)

**Immigration Attorney**

(b) (6)

**Re:** (b) (6)

**Dear** (b) (6)

I am writing to you on behalf of my client (b) (6). (b) (6) has been on my caseload for three years, and I have come to know her personally in that time. (b) (6) has reported to me monthly as scheduled, and has complied with all the conditions of her probation. She has been a model probationer and a joy to supervise. (b) (6) is a concerned and dedicated mother, and I know this period is trying for her since her children are here. I don't know if my letter will be of help to you, but I do think it's important for those in the position to help (b) (6) to know that she has done extremely well since being placed on probation in December 2000. She was never convicted of the offense Possession of Controlled Substance, nor has she ever tested positive for illegal drugs. (b) (6) was granted a deferred adjudication, and her term of supervision is due to expire December 19 of this year.

**Sincerely,**

(b) (6)

**Supervision Officer**

(b) (6)

(To be filed in duplicate)

Fee Stamp

Date (mm/dd/yyyy) JULY 27TH, 2009

I request permission to reapply for admission into the United States.

1. Name (Last) (First) (Middle) (b) (6)	2. File numbers on correspondence from U.S. Citizenship and Immigration Services (USCIS) or former Immigration and Naturalization Service (INS) (if known) (b) (6)
3. Name used when last deported or removed from the U.S. (b) (6)	4. Date of Birth (mm/dd/yyyy) (b) (6)
5. Other names used or known by (b) (6)	6a. Place of Birth (city or town; state or province; and country) PORTO EMPEDOCLE, AGRIGENTO
7. Circumstances under which deported or removed from the United States (Check applicable blocks) <input type="checkbox"/> Excluded and deported or removed. (less than one year ago) <input type="checkbox"/> Arrested and deported or removed. (less than five years ago) <input type="checkbox"/> Removed after having fallen into distress. (less than five years ago) <input type="checkbox"/> Removed as alien enemy. (less than five years ago) <input type="checkbox"/> Removed at U.S. Government expense in lieu of deportation. (less than five years ago)	6b. Country of Citizenship/Nationality ITALY
	8. Length of residence in the United States (years) 18 YEARS
	9. Place of residence at time of deportation or removal from United States (city and state) DALLAS, TEXAS
	10. Place deportation hearing held or application for removal made (city) (b) (6)
11. Country to which deported or removed (b) (6)	12. Detention facility or jail where detained (city and state) (If not detained, write "None") NONE
13. Date of deportation or removal from United States (mm/dd/yyyy) MARCH 25, 2005	14. Port of departure from United States (b) (6)
15. Status desired if permitted to re-enter United States <input type="checkbox"/> Permanent Resident <input checked="" type="checkbox"/> Visitor <input type="checkbox"/> Student <input type="checkbox"/> Other (specify) TO VISIT MY 3 CHILDREN	16. Reasons for desiring to re-enter the United States TO VISIT MY 3 CHILDREN ALL US CITIZENS. ALL YEAR AROUND IF POSSIBLE, ONE CHILD BEING UNDER 18 THEREFORE NOT ALLOWED TO TRAVEL ALONE.
17. Location of American Embassy/Consulate where application for visa will be made (city and country) OTTAWA, ONT	18. Name and relationship of U.S. citizen or lawful permanent resident alien spouse, parent or children, if any 2 CHILDREN WERE BORN IN USA, EXCEPT MY OLDER SON
19. Signature of Applicant (b) (6)	20. Street and number; city or town; state or province; and country of present residence (b) (6)

Signature of person preparing form, if other than applicant.

21. I declare that this document was prepared by me at the request of the applicant and is based on all information of which I have any knowledge.

(Signature)	(Address)	(Date)
-------------	-----------	--------

This space for use by DHS officer	
File A - Decision	Date of Action DD or OIC Office

Complete and Submit Both Forms.

RECEIVED	TRANS. IN	RET'D-TRANS.-OUT	COMPLETED
----------	-----------	------------------	-----------



(b) (6)



April 24, 2007

The Board of Pardons and Parole  
(b) (6)



Subject : (b) (6)



---

This letter is to certify that I have been treating (b) (6) since the month of September 2006. (b) (6) suffers from Bipolar Disorder Type I, with a recent episode of major depression since many years. She is presently on medication with antidepressant drugs and mood stabilisers. (b) (6) she feels very well now and she has a genuine wish to have a normal relationship with her three children that are presently in U.S.

As a psychiatrist and psychotherapist I think that right now (b) (6) is able to have a healthy relationship with her children. In my opinion, her children (in particular the youngest, which is twelve years old) could have a lot of positive psychological benefits if they have a love relationship with her mother.

(b) (6)



(b) (6)

**FAMILY PHYSICIAN**

(b) (6)

To the attention of : The Board of Pardons and Parole

(b) (6)

Subject: (b) (6)

As her family physician, I have been actively providing medical care to (b) (6) for the past two years. She was referred for specialized medical care to (b) (6) psychiatrist, who has been actively following her since last year. (b) (6) has been misdiagnosed in the past with a unipolar depressive disorder and did not receive appropriate medical treatment until only last year. Her correct medical diagnosis is that of a bipolar disorder and she has responded well to a more specific treatment. She has proven to be very compliant to medical advice and collaborates well to the treatment plan. She is considered to be in remission now and her state of mind is very much different than that which was the case when she was living in the United States of America. In fact, when she was in the state of (b) (6) her decision making process was altered by her untreated bipolar disorder.

(b) (6) remains very troubled by the fact that she is denied entry into the United States, rendering her unable to visit her children, particularly her twelve year old son, who she has been continuing to talk to via telephone several times a week for the past two years. More than anything else in the

world, she longs to hug him and show the affection that a loving mother cannot keep in.

I have been able to observe her behavior for the past two years and it has been without reproach. She has proven to be an exemplary citizen. I truly recommend without hesitation that the Board of Pardons and Parole grants her a pardon, so that the natural bond between mother and child may be experienced by all concerned.

Sincerely,

(b) (6)





CERTIFICATION OF VITAL RECORD

DEPARTMENT OF STATE HEALTH SERVICES  
VITAL STATISTICS UNIT

(b) (6)

(b) (6)

## 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)  
[thomas.fong@usdoj.gov](mailto:thomas.fong@usdoj.gov)

---

**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 - (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.

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)  
[thomas.fong@usdoj.gov](mailto:thomas.fong@usdoj.gov)

---

**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*



---

**EXHIBIT 1**  
**J-1 VISA ENTRY**  
**ON AUG 10, 2000**  
**AND I-94 FOR**  
**LEGAL ENTRY**

28

VISA

(b) (6)

UNITED STATES  
OF AMERICA

VISA

(b) (6)

(b) (6)

**EXHIBIT 2**  
**I-130 FILED BY**  
**U.S.C SISTER**  
**WITH PRIORITY**  
**DATE,**  
**APPROVED ON**  
**APRIL 15, 2009**



## THE UNITED STATES OF AMERICA

RECEIPT NUMBER (b) (6)		CASE TYPE I-102 APPLICATION FOR INITIAL/REPLACEMENT I-94 ARRIVAL
RECEIPT DATE January 5, 2009	PRIORITY DATE	APPLICANT (b) (6)
NOTICE DATE February 20, 2009	PAGE 1 of 1	
(b) (6)		Notice Type: Approval Notice Class: J1 Valid from 08/10/2000 Valid for Duration of Status
The above application has been approved. The replacement Form I-94 is attached at the bottom of this notice. THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.		

Please see the additional information on the back. You will be notified separately about any other cases you filed.

IMMIGRATION &amp; NATURALIZATION SERVICE

(b) (6)



Form I-797A (Rev. 09/07/93)N

PLEASE TEAR OFF FORM I-94 PRINTED BELOW, AND STAPLE TO ORIGINAL I-94 IF AVAILABLE

Detach This Half for Personal Records

(b) (6)

CLASS J1

VALID FROM 08/10/2000

Valid for Duration of Status

PETITIONER:

(b) (6)

257808715 08

Receipt Number (b) (6)

Immigration and  
Naturalization Service

I-94

Departure Record

Petitioner:

(b) (6)

# UNITED STATES OF AMERICA

I-130 IMMIGRANT PETITION FOR RELATIVE

(b) (6)		FIANCE(E), OR ORPHAN
RECEIPT DATE July 18, 2001	PRIORITY DATE May 3, 2001	PETITIONER (b) (6)
NOTICE DATE April 15, 2009	PAGE 1 of 1	BENEFICIARY (b) (6)
(b) (6)		Notice Type: Approval Notice Section: Sister or brother of U.S. Citizen, 203(a)(4) INA

The above petition has been approved. We have sent the original visa petition to the Department of State National Visa Center (NVC), 32 Rochester Avenue, Portsmouth, NH 03801-2909. NVC processes all approved immigrant visa petitions that need consular action. It also determines which consular post is the appropriate consulate to complete visa processing. NVC will then forward the approved petition to that consulate.

The NVC will contact the person for whom you are petitioning (beneficiary) concerning further immigrant visa processing steps.

If you have any questions about visa issuance, please contact the NVC directly. However, please allow at least 90 days before calling the NVC if your beneficiary has not received correspondence from the NVC. The telephone number of the NVC is (603) 334-0700.

The approval of this visa petition does not in itself grant any immigration status and does not guarantee that the alien beneficiary will subsequently be found to be eligible for a visa, for admission to the United States, or for an extension, change, or adjustment of status.

THIS FORM IS NOT A VISA NOR MAY IT BE USED IN PLACE OF A VISA.

Please see the additional information on the back. You will be notified separately about any other cases you filed.  
U.S. CITIZENSHIP & IMMIGRATION SVC

(b) (6)



**EXHIBIT 3**  
**GUILTY PLEA IN**

**(b) (6)**

State of (b) (6)

vs

In the Circuit Court

**FILED**

SEP 13 2002

(b) (6)

CLERK CIRCUIT COURT

Case Number  
Division

INSTRUMENT  
COMPUTER  
D. Q.

(b) (6)

Defendant

### ORDER OF PROBATION

This cause coming on this day to be heard before me, and the defendant being present, and having

**PLED GUILTY**

to/of the offense(s) of

**AGGRAVATED BATTERY (COUNT 1)**  
**AND AGGRAVATED CHILD ABUSE (COUNT 2)**

### Judgment

\_\_\_ The court hereby adjudges you to be guilty of the above offense(s).

X The court withholds adjudication of guilt.

### Sentence

Now therefore, it is ordered and adjudged that you be placed on Probation for a period of **TWO (2) YEARS, AS TO COUNTS 1 AND 2, TO RUN CONCURRENTLY**, under the supervision of the Department of Corrections, subject to Florida law.

\_\_\_ It is further ordered and adjudged that you be

\_\_\_ committed to the Department of Corrections

\_\_\_ confined in the County Jail

for a term of with credit for jail time. After you have served of the term you shall be placed on Probation for a period of under the supervision of the Department of Corrections, subject to (b) (6)



----- It is further ordered that you shall comply with the following conditions of Probation during the Probation period:

- (1) Not later than the fifth day of each month, you will make a full and truthful report to your Officer on the form provided for that purpose.
- (2) You will not change your residence or employment or leave the county of your residence without first procuring the consent of your officer.
- (3) You will not possess, carry or own any firearm. You will not possess, carry or own any weapon without first procuring the consent of your officer.
- (4) You will live without violating any law. A conviction in a court of law shall not be necessary in order for such a violation to constitute a violation of your Probation.
- (5) You will not associate with any person engaged in any criminal activity.
- (6) You will not use intoxicants to excess or possess any drugs or narcotics unless prescribed by a physician. Nor will you visit places where intoxicants, drugs or other dangerous substances are unlawfully sold, dispensed or used.
- (7) You will work diligently at a lawful occupation, advise your employer of your probationary status and support any other dependents to the best of your ability, as directed by your officer.
- (8) You will promptly and truthfully answer all inquiries directed to you by the court or the officer, and allow your officer to visit in your home, at your employment site or elsewhere, and you will comply with all instructions your officer may give you.
- (9) You will perform hours of community service at the rate of not less than ten (10) hours per month as directed by your officer.
- (11) You will be subject to random urinalysis at the discretion of your officer. You will pay the reasonable costs of such testing.
- (12) You will pay the following monetary obligations (plus a 4 percent surcharge) to the Department of Corrections, as directed by your Probation Officer by and through the Department of Corrections:

Restitution in the amount of \$ to.

Felony court costs in the amount of \$200.00, \$50.00 to the Crimes Compensation Trust Fund, \$3.00 to the Department of Revenue for the Additional Court Cost Clearing Trust Fund, \$20.00 for the Crime Stoppers Trust Fund, \$3.00 for deposit in the (b) (6) Court Trust Fund, and, if your offenses involve illegal drugs, \$100.00 for the (b) (6) Fund.

State Processing Fee in the amount of \$40.00 per check if your offense is worthless check.

Public Defender Lien in the amount of \$50.00, if Public Defender appointed.

Public Defender Application Fee in the amount of \$40.00, if Public Defender appointed.

Cost of Supervision at a rate of \$40.00 for each month of supervision.

The total amount due for all monetary obligations, plus a 4 percent surcharge, shall be paid in accordance with the priority schedule established by Administrative Order (b) (6), issued by the Chief Judge of the (b) (6) Circuit.

All monetary obligations of your probation/community control will be paid in regular monthly installments amortized over the term of your probation/community control with the last payment due no later than 30 days prior to the scheduled termination of your supervision. Failure to meet the payment obligation will be a violation of your probation/community control.

### SPECIAL CONDITIONS

(13) ATTEND BATTERER'S INTERVENTION; ATTEND PARENTING SKILLS CLASS; PAY \$201.00 DOMESTIC BATTERY SURCHARGE; EARLY TERMINATION AUTHORIZED.

If you have entered a plea of guilty or no contest or have been convicted or previously convicted in the State of (b) (6) for an offense specified in (b) (6) Statutes, you are required to submit two biological specimens to the (b) (6) Department of Law Enforcement. These specimens shall be collected in an approved manner as directed by Department of Corrections staff within thirty (30) days, unless otherwise directed by the court.

You are hereby placed on notice that the court may at any time rescind or modify any of the conditions of your Probation, or may extend the period of Probation as authorized by law, or may discharge you from further supervision. If you violate any of the conditions of your Probation, you may be arrested and the court may revoke your Probation, adjudicate you guilty if adjudication was withheld, and impose any sentence which it might have imposed before placing you on Probation or require you to serve the balance of said sentence.

It is further ordered that when you have been instructed as to the conditions of Probation, you shall be released from custody if you are in custody, and if you are at liberty on bond, the sureties thereon shall stand discharged from liability.



---

**EXHIBIT 4**  
**CONVICTION IN**  
**FEDERAL**  
**COURT UNDER**  
**18 U.S.C 1546**

## UNITED STATES DISTRICT COURT

(b) (6)

2003 AUG 19 P 1:24

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

CASE NUMBER:

(b) (6)

vs.

(b) (6)

Defendant's Attorney:

(b) (6)

## THE DEFENDANT:

- ☒ pleaded guilty to count(s) One of the Indictment.  
☐ pleaded nolo contendere to count(s) which was accepted by the court.  
☐ was found guilty on count(s) after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offenses:

<u>TITLE &amp; SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>DATE OFFENSE CONCLUDED</u>	<u>COUNT NUMBER(S)</u>
18:1546(a)	Possession of a Falsely Made Employment Authorization Card	May, 2003	ONE (1)

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and the Mandatory Victims Restitution Act of 1996.

- ☐ The defendant has been found not guilty on count(s)  
☐ Count(s) (is)(are) dismissed on the motion of the United States.

IT IS FURTHER ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid.

Defendant's Soc. Sec. No.: N/A

Defendant's Date of Birth:

(b) (6)

Date of Imposition of Sentence: August 19, 2003

Defendant's USM No.:

Defendant's Mailing Address: c/o U.S. Marshal

Defendant's Residence Address: c/o U.S. Marshal

(b) (6)

CERTIFIED A TRUE COPY

(b) (6)

U.S. DISTRICT COURT

By: (b) (6)

Deputy Clerk

UNITED STATES DISTRICT JUDGE

DATE: August 19, 2003



Defendant:  
Case No.:

(b) (6)

Judgment - Page 2 of 6

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of time served plus seven (7) days, to expire on Tuesday, August 26, 2003.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.  
☐ The defendant shall surrender to the United States Marshal for this district.

☐ at  a.m./p.m. on   
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons.

☐ before 2 p.m. on   
☐ as notified by the United States Marshal.  
☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on  to  at   
, with a certified copy of this judgment.

United States Marshal

By:   
Deputy Marshal

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed)  Date   
Defendant  
  
 Date   
U.S. Probation Officer/Designated Witness

Defendant:

Judgment - Page 3 of 6

Case No.:

(b) (6)

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

While on supervised release, the defendant shall not commit another federal, state, or local crime, and shall not possess a firearm, ammunition, or destructive device as defined in 18 U.S.C § 921.

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the probation officer.

X The above drug testing condition is suspended based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

The defendant shall comply with the following standard conditions that have been adopted by this court.

**STANDARD CONDITIONS OF SUPERVISION**

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instruction of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician, and shall submit to periodic urinalysis tests as directed by the probation officer to determine the use of any controlled substance;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of any arrest or questioning by law enforcement officer; *These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.*
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirements; *U.S. Probation Officer Designated Witness*
- 14) if this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

(Signed)

Date

Defendant:  
Case No.:

(b) (6)

Judgment - Page 5 of 6

## CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B. The defendant shall pay interest on any fine or restitution of more than \$2,1840, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for default and delinquency pursuant to 18 U.S.C. §3612(g).

	<u>Assessment</u>	<u>Fine</u>	<u>Total Restitution</u>
<u>Totals:</u>	\$100.00	\$	\$

## FINE

The above fine includes costs of incarceration and/or supervision in the amount of \$.

☐ The court has determined that the defendant does not have the ability to pay interest. It is ordered that:

- ☐ The interest requirement is waived.  
☐ The interest requirement is modified as follows:

## RESTITUTION

☐ The determination of restitution is deferred until \_\_\_\_\_. An Amended Judgment in a Criminal Case will be entered after such a determination. The U.S. Attorneys Office is directed to provide the necessary information to the court.

☐ The defendant shall make restitution to the following victims in the amounts listed below:

☐ Restitution is ordered jointly and severally with:

<u>Name of Payee</u>	<u>Total Amount of Loss</u>	<u>Amount of Restitution Ordered</u>	<u>Priority Order or Percentage of Payment</u>
<p>These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.</p>			
		(Signed) _____	Date _____
		Defendant	
<u>Totals:</u>	\$ _____	\$ _____	

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority order or percentage payment column above.

The amount of loss and the amount of restitution ordered will be the same unless, pursuant to 18 U.S.C. §3664(f)(3)(B), the court orders nominal payments and this is reflected on Sheet 6, Statement of Reasons.

Defendant:

Judgment - Page 6 of 6

Case No.:

(b) (6)

## SCHEDULE OF PAYMENTS

Payments shall be applied in the following order: (1) assessment; (2) non-federal restitution; (3) federal restitution; (4) fine principal; (5) costs; (6) interest; (7) penalties.

Payment of the total criminal monetary penalties shall be due as follows:

I. X In fullA. X due immediately

B. \_\_\_ on or before \_\_\_

II. \_\_\_ In installments

A. \_\_\_ monthly in installments of \$ \_\_\_ over a period of \_\_\_ months, to commence \_\_\_ days after date of this judgment.

B. \_\_\_ in \_\_\_ installments of \$ \_\_\_ over a period of \_\_\_ to commence \_\_\_ days after the date of this judgment.

Any payment ordered under Part II, must comply with 18 U.S.C. §3572, 18 U.S.C. §3664(n), and include a provision under 18 U.S.C. §3664(k) in which defendant must notify the court of any material changes in defendant's economic circumstances. Upon such notice, the court may adjust the installment payment schedule.

Special instructions regarding the payment of criminal monetary penalties pursuant to 18 U.S.C. §3664(f)(3)(A):

I HEREBY CERTIFY that the foregoing  
is  
of the

(b) (6)

(Signature of Immigration Officer)

UNITED STATES DEPARTMENT OF JUSTICE - DHS

(b) (6)

Date 10-21-06 Total of 8 pages

In the event the entire amount of criminal monetary penalties imposed is not paid prior to the commencement of supervision, the U.S. probation officer shall pursue collection of the amount due. The defendant will receive credit for all payments previously made toward any criminal monetary penalties imposed.

\_\_\_ The defendant shall forfeit the defendant's interest in the following property to the United States:

If this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate Financial Responsibility Program, are to be made to the Clerk, U.S. District Court, unless otherwise directed by the court.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) \_\_\_\_\_ Date \_\_\_\_\_  
Defendant

\_\_\_\_\_  
U.S. Probation Officer/Designated Witness Date \_\_\_\_\_

**EXHIBIT 6**  
**MARRIAGE**  
**CERTIFICATE OF**  
**DEC 10, 2007**



(b) (6)

(b) (6)

(b) (6)

CERTIFICATE OF MARRIAGE

(b) (6)

(b) (6)

(b) (6)

(b) (6)

**EXHIBIT 7**  
**DENIAL LETTER**  
**OF FORMER**  
**I-130 ON**  
**MARCH 20, 2008**



(b) (6)



U.S. Citizenship  
and Immigration  
Services

(b) (6)

Date: March 20, 2008

Form: I-130

FILE: (b) (6)

**DECISION**

Dear (b) (6)

The record reflects that on March 14, 2003 you filed a Petition for Alien Relative, Form I-130, on behalf of (b) (6) to confer the benefits of Section 201(b) of the Immigration and Nationality Act as the spouse of a United States citizen. Records indicate that you divorced your spouse, (b) (6) on November 30, 2007.

In light of the foregoing, this office considers the matter closed and no further action will be taken on the petition.

(b) (6)

Acting FOD

JJJ/0019