



Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

5107 Leesburg Pike, Suite 1903
Falls Church, Virginia 22041

September 21, 2018

Jacqueline Stevens
Northwestern University
Dept. of Political Science
601 University Place
Evanston, IL 60208

Re: FOIA 2015-27249

Dear Prof. Stevens,

This letter is in response to your Freedom of Information Act (FOIA) request to the Executive Office for Immigration Review (EOIR) in which you seek investigatory materials relating to certain complaints against immigration judges (IJs). We apologize for the delay in providing this response; the response was delayed both by the complexity of the request, and the litigation surrounding *AILA v. EOIR*.

Responsive documents are enclosed. Portions of the enclosed documents have been redacted in accordance with 5 U. S.C. § 552(b)(6) to avoid a clearly unwarranted invasion of personal privacy, and/or 5 U. S.C. § 552(b)(5) to protect privileged information. The reason for redaction is clearly marked on each redacted portion. Additionally, each complaint was evaluated for release in conformity with *AILA v. EOIR*, No. 13-840 (D.D.C. filed June 6, 2013). In each case, it was determined that the public interest in release did not outweigh the privacy interest of the immigration judge.

There will be no charge for the enclosed documents.

Please note that the following complaint numbers did not contain any responsive records: 253, 513, 678, 682, and 718. These complaints may have been combined with other complaints, or may have been expunged from the record pursuant to an agreement or order.

In the following cases, documents not created or maintained by EOIR were referred to other agencies for direct response to you:

#789: Report of Investigation (Office of the Inspector General)
#770: Memorandum of 6/4/2013 w/attachment (Office of the Inspector General)
#731: Report of Investigation (Office of the Inspector General)

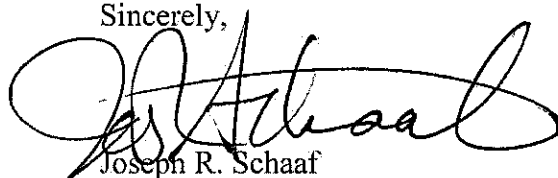
#762: E-mails and documents Oct 2012 (ICE)
E-mail of 2/11/2013 (Office of Professional Responsibility)
Letter of 8/8/2014 (Office of Professional Responsibility)
E-mail of 7/12/2012 (ICE)

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. *See* <http://www.justice.gov/oip/foiapost/2012foiapost9.html>.

You may contact our FOIA Public Liaison at the telephone number 703-605-1297 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in black ink, appearing to read "J. Schaaf", written over a horizontal line.

Joseph R. Schaaf

Chief Counsel for Administrative Law

Enclosure:

EOIR FOIA# 2015-27249



Single Complaint Detail

Complaint Number: 671 **Immigration Judge:** [REDACTED] **Complaint Date:**
Current ACIJ: Fong, Thomas Y. K. **Status:** CLOSED **Final Action:** Complaint concluded -- IJ retirement made action unnecessary **Final Action Date:** 10/01/12
Base City: [REDACTED]

A-Number(s)	Complaint Nature(s)	Complaint Source(s)
[REDACTED]	Legal	[REDACTED]

Complaint Narrative: IJ terminated proceedings finding the R a US Citizen. DIHA appealed seeking a reversal and "recusal and reassignment of the matter to another IJ."

Complaint History	
10/01/12	Complaint concluded -- IJ retirement made action unnecessary [REDACTED]
10/01/12	Database entry created

Processing, FOIA (EOIR)

From: Fong, Thomas (EOIR)
Sent: Monday, October 01, 2012 1:57 PM
To: Moutinho, Deborah (EOIR)
Cc: Keller, Mary Beth (EOIR); Fong, Thomas (EOIR)
Subject: RE: IJC Memo - (b) (6) (b) (6)
Attachments: complaint intake form May 2010.doc

Completed Intake Complaint Form attached and all action necessary on this same date. No corrective action can be taken with IJ (b) (6) as (b) (6) retired on (b) (6). The remand matter will be transferred on the (b) (6) IC rotation wheel to another IJ for compliance with the BIA's remand directives.

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) @usdoj.gov

From: Moutinho, Deborah (EOIR)
Sent: Monday, October 01, 2012 6:35 AM
To: Fong, Thomas (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: FW: IJC Memo - (b) (6) (b) (6)

Good Morning ACIJ Fong,

The attached case concerning IJ (b) (6) is being forwarded to you per ACIJ Keller's request. Please complete the attached complain intake form and return it to me so the complaint can accurately be added into the database.

Thank you
Deborah

From: Henderson, Suzette M. (EOIR)
Sent: Friday, September 28, 2012 8:44 AM
To: O'Leary, Brian (EOIR); Keller, Mary Beth (EOIR)
Cc: Minton, Amy (EOIR); Weil, Jack (EOIR); Moutinho, Deborah (EOIR); Henderson, Suzette M. (EOIR)
Subject: IJC Memo - (b) (6) (b) (6)

Good morning,

Please see the attached IJC Memo from Chairman David L. Neal. Thank you.

Suzette Henderson

Immigration Judge Complaint Intake Form

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

Date Received at OCIJ:

complaint source information	
complaint source type	
<input type="checkbox"/> anonymous <input checked="" type="checkbox"/> BIA <input type="checkbox"/> ___ Circuit <input type="checkbox"/> EOIR <input type="checkbox"/> DHS <input type="checkbox"/> Main Justice <input type="checkbox"/> respondent's attorney <input type="checkbox"/> respondent <input type="checkbox"/> OIL <input type="checkbox"/> OPR <input type="checkbox"/> OIG <input type="checkbox"/> media <input type="checkbox"/> third party (e.g., relative, uninterested attorney, courtroom observer, etc.) <input type="checkbox"/> other: _____	
complaint receipt method	
<input type="checkbox"/> letter <input checked="" type="checkbox"/> IJC memo (BLA) <input type="checkbox"/> email <input type="checkbox"/> phone (incl. voicemail) <input type="checkbox"/> in-person <input type="checkbox"/> fax <input type="checkbox"/> unknown <input type="checkbox"/> other: _____	
date of complaint source	complaint source contact information
(i.e., date on letter, date of appellate body's decision) BIA decision dated 9/17/2012, email referred by BIA Chair 9/28/12 and routed to ACIJ from IJ Conduct unit on 10/1/2012	name: _BIA Chair David Neal _____ address: _____ _____ _____ email: _____ phone: _____ fax: _____
additional complaint source details	
(i.e., DHS component, media outlet, third party details, A-number) (b) (6) (b) (6)	

complaint details		
IJ name	base city	ACIJ
(b) (6)	(b) (6)	Thomas Y.K. Fong
relevant A-number(s)	date of incident	
(b) (6)	IJ decision entered 9/7/2010.	
allegations		
IJ terminated proceedings finding the respondent a US Citizen. DHS appealed seeking a reversal and "recusal and reassignment of the matter to another immigration judge." BIA denied the request to recuse or reassign the case, but sustained the appeal. It found that IJ's decision "does not contain sufficient factual findings or an explanation as to how (b) (6) arrived at (b) (6) conclusion." It further stated that the IJ's decision was "clearly insufficient to allow for a meaningful appellate review." It ordered the IJ on remand "to make clear and complete findings of fact supported by the record and in compliance with controlling law. See 8 CFR 1003.1(d) (3)(iv); Matter of S-H-, 23 IN 462, 465-66 (BLA 2002). "		
nature of complaint		
<input type="checkbox"/> in-court conduct <input type="checkbox"/> out-of-court conduct <input type="checkbox"/> due process <input type="checkbox"/> bias <input checked="" type="checkbox"/> legal <input type="checkbox"/> criminal <input type="checkbox"/> incapacity <input type="checkbox"/> other: _____		

Memorandum



Subject	Date
<i>Matter of</i> [REDACTED] (b) (6), A [REDACTED] (b) (6) [REDACTED] (b) (6)	September 26, 2012

To
Brian O'Leary, Chief Immigration Judge
MaryBeth Keller, Assistant Chief Immigration Judge

From
David L. Neal, Chairman

Attached please find a copy of the Board's decision dated [REDACTED] (b) (6), and relevant portions of the record in the above-referenced matter.

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

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

Thank you for your attention to this matter.

Falls Church, Virginia 22041

File: A [REDACTED] (b) (6)

Date: [REDACTED] (b) (6)

In re: [REDACTED] (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: [REDACTED] (b) (6)
Assistant Chief Counsel

APPLICATION: Termination of proceedings

The Department of Homeland Security ("DHS") appeals from the decision of the Immigration Judge dated September 8, 2010, terminating proceedings. The appeal will be sustained, the proceedings will be reinstated, and the record will be remanded for further proceedings consistent with this decision. The request for recusal or reassignment of the matter to another Immigration Judge is denied.

We review for clear error the findings of fact, including the determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

As noted by the DHS on appeal, the transcript of proceedings does not reflect that pleadings were taken in this case (DHS Br. at 3). Moreover, the Immigration Judge's decision does not contain sufficient factual findings or an explanation as to how [REDACTED] arrived at [REDACTED] conclusion that the respondent is a United States citizen. See *Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999); 8 C.F.R. §§ 1240.10(c), (d), 1240.12(c) (requiring that pleadings be taken and that the Immigration Judge make findings as to removability in her oral or written decision). For example, there is no evidence that even the respondent's father became a naturalized citizen. The Immigration Judge's decision is clearly insufficient to allow for meaningful appellate review.

As we have limited fact-finding ability on appeal, we will remand the record to the Immigration Judge to make clear and complete findings of fact supported by the record and in compliance with controlling law. See 8 C.F.R. § 1003.1 (d)(3)(iv) (Board will not engage in fact finding on appeal); *Matter of S-H-*, 23 I&N Dec. 462, 465-66 (BIA 2002). Accordingly, the following orders shall be entered.

ORDER: The DHS's appeal is sustained.

A (b) (6)

FURTHER ORDER: The Immigration Judge's order terminating proceedings is vacated, and proceedings are reinstated.

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

A handwritten signature in black ink, appearing to read "C. M. B. S.", is written above a horizontal line.

FOR THE BOARD

IMMIGRATION COURT

(b) (6)

In the Matter of

Case No.: (b) (6)

(b) (6)
Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on SEP - 7 2007. 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 alternate order of removal to .

Respondent's application for:

- [] Asylum was () granted () denied () withdrawn.
- [] Withholding of removal was () granted () denied () withdrawn.
- [] A Waiver under Section _____ was () granted () denied () withdrawn.
- [] Cancellation of removal under section 240A(a) was () granted () denied () withdrawn.

Respondent's application for:

- [] Cancellation under section 240A(b)(1) was () granted () denied () withdrawn. If granted, it is 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. If granted it is 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. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
- [] Respondent's application of () withholding of removal () deferral of removal under Article III of the Convention Against Torture was () granted () denied () withdrawn.
- [] 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.

[X] Proceedings were terminated. *W/ PATERSON*

[X] Other: *R. na US. Citizen* (b) (6)
Date: _____

Immigration Judge

Appeal: Waived/Reserved Appeal Due By:

10-8-10


ALIEN NUMBER: (b) (6)

(b) (6)

ALIEN NAME:

(b) (6)

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: SEP - 8 2007 BY: COURT STAFF 
Attachments: EOIR-33 EOIR-
28 Legal Services List Other

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

(b) (6)

File No.: A

(b) (6)

September 8, 2010

In the Matter of

(b) (6)

)
)
) IN REMOVAL PROCEEDINGS
)

Respondent)

CHARGE: Section 237(a)(1)(B) of the Immigration and
Nationality Act - overstay.

APPLICATIONS: Termination of proceedings.

ON BEHALF OF RESPONDENT:

ON BEHALF OF DHS:

Pro se

(b) (6)

Assistant Chief Counsel

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 51-year-old citizen and national of the United States born in the Philippines who claims that he is a United States citizen by virtue of the citizenship of his father who declared him a United States citizen via an affidavit that was filed with the Consulate on August 20, 1993.

The Court has given the Government ample opportunity to overcome this evidence of citizenship and the Government has been unable to do so.

So, based on the evidence presented, I find that the respondent is a United States citizen and I have no jurisdiction over his claim.

ORDER

It is, therefore, the decision of the Court that these proceedings be, and are, hereby terminated.

(b) (6)

CERTIFICATE PAGE

I hereby certify that the attached proceeding before
JUDGE (b) (6) in the matter of:

(b) (6)

is an accurate, verbatim transcript of the recording as provided by
the Executive Office for Immigration Review and that this is the
original transcript thereof for the file of the Executive Office
for Immigration Review.

(b) (6)

(b) (6) Transcriber
Free State Reporting, Inc.

November 22, 2010
(completion date)

By submission of this CERTIFICATE PAGE, the Contractor certifies
that a Sony BEC/T-147, 4-channel transcriber or equivalent, and/or
CD, as described in Section C, paragraph C.3.3.2 of the contract,
was used to transcribe the Record of Proceeding shown in the above
paragraph.