



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)

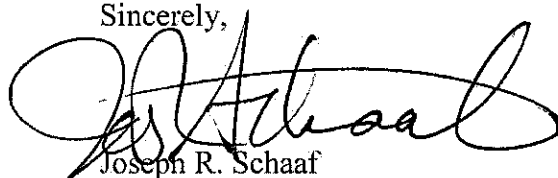
#762: E-mails and documents Oct 2012 (ICE)
E-mail of 2/11/2013 (Office of Professional Responsibility)
Letter of 8/8/2014 (Office of Professional Responsibility)
E-mail of 7/12/2012 (ICE)

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



Detail

Complaint Number: 785

Immigration Judge: (b) (6)

Complaint Date: 07/30/13

Current ACIJ
Davis, John W.

Base City
(b)

Status
OPEN

Final Action

Final Action Date

A-Number(s)	Complaint Nature(s)	Complaint Source(s)
(b) (6)	Uncategorized	BIA

Complaint Narrative: Matter of (b) (6)

Complaint History	
07/30/13	Complaint referred to ACIJ
07/30/13	Database entry created

Processing, FOIA (EOIR)

From: Davis, John (EOIR)
Sent: Monday, June 01, 2015 3:09 PM
To: Keller, Mary Beth (EOIR)
Cc: Moutinho, Deborah (EOIR); Romig, Shawn (EOIR)
Subject: RE: IJC Memo - Matter of (b) (6), (b) (6), (b) (6)
Attachments: (b) (6) IJ Complaint Intake form.doc
Importance: High

Judge Keller, Deborah, and Shawn,

Attached please find the IJC in this matter. We're doing a LOC and I'll get a copy of it to Judge Keller and the two of you as quickly as I can, certainly within the next few days.

Please let me know if you need anything ofurther in this matter.

Regards,

John W. Davis
Assistant Chief Immigration Judge
Executive Office for Immigration Review
United States Immigration Court
(b) (6) (GEO) (b) (6) (Downtown)
1961 Stout Street. Ste 3101
Denver, CO 80294-3003



From: Keller, Mary Beth (EOIR)
Sent: Friday, May 29, 2015 2:00 PM
To: Davis, John (EOIR)
Cc: Moutinho, Deborah (EOIR)
Subject: FW: IJC Memo - Matter of (b) (6), (b) (6), (b) (6)

John,

Before we send you your reports to update, I am trying to clean up on our end. This is the last communication I have on this – is that accurate or was there more? We need to close this one out somehow.

Let me know your thoughts– Thanks.
Have a good weekend.

Mtk

MaryBeth Keller
Assistant Chief Immigration Judge

From: Keller, Mary Beth (EOIR)
Sent: Thursday, October 16, 2014 10:16 AM
To: Davis, John (EOIR); Moutinho, Deborah (EOIR)
Cc: Calderon, Rosario (EOIR)
Subject: RE: IJC Memo - Matter of (b) (6), (b) (6) (b) (6)

Hi John,

Attached may be a clue – regardless, at this point we need you to do the Intake on it, and resolve however you think appropriate. Looks like you are going to have to retrieve the record from a quick read of the BIA decision – lots of transcript cites.
Thanks.

Mtk

MaryBeth Keller

From: Davis, John (EOIR)
Sent: Tuesday, September 30, 2014 5:04 PM
To: Keller, Mary Beth (EOIR); Moutinho, Deborah (EOIR)
Cc: Calderon, Rosario (EOIR)
Subject: RE: IJC Memo - Matter of (b) (6), (b) (6) (b) (6)
Importance: High

Mary Beth and Deborah,

I can find absolutely nothing on this one!

How would you like to proceed?

Regards,

John W. Davis
Assistant Chief Immigration Judge
Executive Office for Immigration Review
United States Immigration Court
(b) (6) (GEO) (b) (6) (Downtown)
1961 Stout Street. Ste 3101
Denver, CO 80294-3003



From: Keller, Mary Beth (EOIR)
Sent: Wednesday, September 03, 2014 7:36 AM
To: Moutinho, Deborah (EOIR); Davis, John (EOIR)
Subject: RE: IJC Memo - Matter of (b) (6), (b) (6) (b) (6)

John,

This is a very old BIA referral involving Judge (b) (6), that I do not have anything in addition to the below on – The db does not even have the complaint nature. Would you please advise and send us any update/resolution wrt this complaint (number 785) ?
Thanks.

Mtk

MaryBeth Keller

From: Moutinho, Deborah (EOIR)
Sent: Tuesday, July 30, 2013 4:13 PM
To: Davis, John (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: FW: IJC Memo - Matter of (b) (6), (b) (6) (b) (6)

Good Afternoon Sir

The attached case concerning IJ (b) (6) is being forwarded to you per ACIJ Keller's request.

Thank you
Deborah

From: Henderson, Suzette M. (EOIR)
Sent: Tuesday, July 30, 2013 2:10 PM
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 - Matter of (b) (6), (b) (6) (b) (6)

Good afternoon,

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

R/Suzette Henderson

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

Date Received at OCIJ: 7-30-13

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 (BIA) <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) 30 July 2013	name: _____ address: _____ _____
additional complaint source details	email: _____ phone: _____ fax: _____
(i.e., DHS component, media outlet, third party details, A-number)	

complaint details		
IJ name	base city	ACIJ
(b) (6)	(b) (6)	John W. Davis
relevant A-number(s)	date of incident	
(b) (6)	March 15, 2012	
allegations		
IJ made speculative, sarcastic, and otherwise unnecessary comments during the hearing. Further IJ extensively questioned respondent, then allowed DHS to question respondent before allowing respondents counsel to question respondent. Respondent bears burden and should be allowed to present his claim first		
nature of complaint		
<input checked="" type="checkbox"/> in-court conduct <input type="checkbox"/> out-of-court conduct <input type="checkbox"/> due process <input type="checkbox"/> bias <input type="checkbox"/> legal <input type="checkbox"/> criminal <input type="checkbox"/> incapacity <input type="checkbox"/> other: _____		

Processing, FOIA (EOIR)

From: Moutinho, Deborah (EOIR)
Sent: Monday, June 01, 2015 2:49 PM
To: Davis, John (EOIR); Keller, Mary Beth (EOIR)
Cc: Romig, Shawn (EOIR)
Subject: RE:(b) (6)
Attachments: (b) (6).pdf

Please see the attached database on IJ (b) (6) We do not have the complaint intake sheet for the IJC

Thank you
Deborah

From: Davis, John (EOIR)
Sent: Monday, June 01, 2015 2:37 PM
To: Keller, Mary Beth (EOIR); Moutinho, Deborah (EOIR)
Cc: Romig, Shawn (EOIR)
Subject: RE: (b) (6)

Deborah,

Can you also check and see if I have an IJC in the system on this one.

I can't find it.

Thanks!

John W. Davis
Assistant Chief Immigration Judge
Executive Office for Immigration Review
United States Immigration Court
(b) (6) (GEO) (b) (6) (Downtown)
1961 Stout Street. Ste 3101
Denver, CO 80294-3003



From: Keller, Mary Beth (EOIR)
Sent: Monday, June 01, 2015 12:35 PM
To: Moutinho, Deborah (EOIR)
Cc: Romig, Shawn (EOIR); Davis, John (EOIR)
Subject: (b) (6)

D-
Would you run the db and give ACIJ Davis the electronic version on Judge (b) (6), please? He is probably going to do a written counseling soon so I want to make sure he has the background just in case.
Tx.

Mtk

MaryBeth Keller

Assistant Chief Immigration Judge

(b) (6)

(b) (6) [@usdoj.gov](mailto:██████████@usdoj.gov)



Detail

Complaint Number: 560

Immigration Judge: (b) (6)

Complaint Date: 10/26/11

Current ACIJ
Dean, Larry R.

Base City
(b) (6)

Status
CLOSED

Final Action
Oral counseling

Final Action Date
04/16/12

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

Complaint Narrative: IJ (b) (6) indicated (b) (6) seldom grants non-LPR cancellation and dislikes large exhibits. (b) (6) also watches internet video, web surfs, and looks at YouTube during hearings.

Complaint History	
10/26/11	Complaint referred to ACIJ
10/27/11	Database entry created
11/07/11	Interviewed complainant
12/16/11	Interviewed interpreter (b) (6) and DHS Counsel
02/01/12	ACIJ met with IJ; scheduled to meet again next week
04/16/12	Oral counseling



Detail

Complaint Number: 331

Immigration Judge: (b) (6)

Complaint Date: 06/30/10

Current ACIJ
Dean, Larry R.

Base City
(b)

Status
CLOSED

Final Action
Complaint dismissed because it cannot be substantiated

Final Action Date
01/26/12

A-Number(s)	Complaint Nature(s)	Complaint Source(s)
	Out-of-court conduct	EOIR

Complaint Narrative: OIG and IRS have uncovered evidence of business account irregularities and unreported income.

Complaint History	
07/01/10	Database entry created
07/02/10	Per OGC, OIG & IRS advise EOIR take no action at this time.
07/26/10	OGC contacted OIG & AUSA
10/04/10	Complaint referred to OIG - OGC contacted OIG
05/09/11	OGC inquiry to OIG; Investigation ongoing.
05/09/11	OIG requests IJ's latest financial disclosure
07/25/11	OIG still investigating
12/20/11	OIG indicates report forthcoming in early 2012
01/26/12	Complaint dismissed because it cannot be substantiated
01/26/12	OIG issued report - (b) (6)



Detail

Complaint Number: 35

Immigration Judge: (b) (6)

Complaint Date: 12/09/09

Current ACIJ
Dean, Larry R.

Base City
(b)

Status
CLOSED

Final Action
Complaint dismissed due to the complainant's failure to state a claim

Final Action Date
01/20/10

A-Number(s)	Complaint Nature(s)	Complaint Source(s)
(b) (6)	Due process	Respondent (b) (6)

Complaint Narrative: Complainant alleges that IJ was improperly appointed, affecting the legality of his hearing.

Complaint History	
12/03/07	Alleged conduct occurred
12/09/09	Complaint referred to ACIJ
01/20/10	Complaint dismissed due to the complainant's failure to state a claim
01/20/10	Response sent to complainant.
03/31/10	Database entry created



Detail

Complaint Status: Both (Open & Closed)

Current ACIJ: ALL ACIJs

IJ: (b) (6)

Base City: ALL Base Cities

Complaint Open Date From : Jun 1, 2003 To : Jun 1, 2015

Total Number of Complaints: 4

Processing, FOIA (EOIR)

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Sent: Thursday, October 16, 2014 10:16 AM
To: Davis, John (EOIR); Moutinho, Deborah (EOIR)
Cc: Calderon, Rosario (EOIR)
Subject: RE: IJC Memo - Matter of (b) (6), (b) (6), (b) (6)
Attachments: RE: IJC Memo - Matter of (b) (6), (b) (6), (b) (6);
FW: IJC Memo - Matter of (b) (6), (b) (6), (b) (6)

Hi John,

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Thanks.

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Cc: Calderon, Rosario (EOIR)
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Importance: High

Mary Beth and Deborah,

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Assistant Chief Immigration Judge
Executive Office for Immigration Review
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Denver, CO 80294-3003



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Sent: Wednesday, September 03, 2014 7:36 AM
To: Moutinho, Deborah (EOIR); Davis, John (EOIR)
Subject: RE: IJC Memo - Matter of (b) (6), (b) (6), (b) (6)

John,

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MaryBeth Keller

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Cc: Keller, Mary Beth (EOIR)
Subject: FW: IJC Memo - Matter of (b) (6), (b) (6) (b) (6)

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Thank you
Deborah

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Sent: Tuesday, July 30, 2013 2:10 PM
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 - Matter of (b) (6), (b) (6) (b) (6)

Good afternoon,

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

R/Suzette Henderson

Processing, FOIA (EOIR)

From: Ortiz-Ang, Susana (EOIR)
Sent: Wednesday, July 31, 2013 4:33 PM
To: Akhund, Ryhana (EOIR); Keller, Mary Beth (EOIR)
Cc: Davis, John (EOIR); Henderson, Suzette M. (EOIR)
Subject: RE: IJC Memo - Matter of (b) (6), (b) (6), (b) (6)

Was it sent to the new location?

From: Akhund, Ryhana (EOIR)
Sent: Wednesday, July 31, 2013 3:17 PM
To: Keller, Mary Beth (EOIR)
Cc: Davis, John (EOIR); Henderson, Suzette M. (EOIR); Ortiz-Ang, Susana (EOIR)
Subject: RE: IJC Memo - Matter of (b) (6), (b) (6), (b) (6)

FedEx express saver to ACIJ Davis in Aurora, CO tracking number: (b) (6) should arrive Monday August 5, 2013.

Thank you,
Ryhana

From: Keller, Mary Beth (EOIR)
Sent: Wednesday, July 31, 2013 9:54 AM
To: Akhund, Ryhana (EOIR)
Cc: Davis, John (EOIR) ((b) (6) @EOIR.USDOJ.GOV); Henderson, Suzette M. (EOIR); Ortiz-Ang, Susana (EOIR) ((b) (6) @EOIR.USDOJ.GOV)
Subject: FW: IJC Memo - Matter of (b) (6), (b) (6), (b) (6)

Good morning Ryhana,
ACIJ Davis in Denver needs to review this rop. Could you please get it from Suzette Henderson at BIA and send it to ACIJ Davis's attention in DEN?
Thanks very much.
Mtk

MaryBeth Keller
Assistant Chief Immigration Judge

From: Henderson, Suzette M. (EOIR)
Sent: Tuesday, July 30, 2013 2:10 PM
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 - Matter of (b) (6), (b) (6), (b) (6)

Good afternoon,

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

R/Suzette Henderson

Processing, FOIA (EOIR)

From: Moutinho, Deborah (EOIR)
Sent: Tuesday, July 30, 2013 4:13 PM
To: Davis, John (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: FW: IJC Memo - Matter of Mario (b) (6), (b) (6), (b) (6)
Attachments: A(b) (6), (b) (6), IJC Memo.pdf

Good Afternoon Sir

The attached case concerning IJ (b) (6) is being forwarded to you per ACIJ Keller's request.

Thank you
Deborah

From: Henderson, Suzette M. (EOIR)
Sent: Tuesday, July 30, 2013 2:10 PM
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 - Matter of (b) (6), (b) (6), (b) (6)

Good afternoon,

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

R/Suzette Henderson

Memorandum



Subject	Date
<i>Matter of</i> (b) (6), (b) (6) (BIA (b) (6))	July 30, 2013

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

From
David L. Neal, Chairman

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

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

This case will be held in Suzette Henderson’s office for one week. If you wish to review the record, please contact Suzette Henderson.

Thank you for your attention to this matter.

Attachments

Falls Church, Virginia 22041

File: A(b) (6)

Date: (b) (6)

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

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

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

APPLICATION: Adjustment of status

The respondent, a native and citizen of Mexico, appeals from an Immigration Judge's March 16, 2012, decision which denied, in the exercise of discretion, his application for adjustment of status under section 245(i) of the Immigration and Nationality Act, 8 U.S.C. § 1255(i). The appeal will be dismissed.

We review the findings of fact, including determinations of credibility, made by the Immigration Judge under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including whether or not the parties have met the relevant burden of proof, and issues of discretion, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii). Our assessment of this case is governed by the REAL ID Act. *See Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006).

The respondent has been present in the United States since he crossed the border without inspection or admission on or about June 1998 (Exh. 1). He has close family ties to the United States including his United States citizen spouse, and the couple's two citizen children, who were ages 13 and 9 at the time of the hearing.¹ The most notable adverse factor of record is that from 1995 until 2007, the respondent had been arrested in the United States eight times, and convicted six times, of driving under the influence of alcohol (Tr. at 37-49, 84-94, 116-18; Exh. 2B). Some of these convictions also included driving without a license or insurance (I.J. at 5).

As found by the Immigration Judge, the respondent appears to have been sober since 2007. He has been regularly attending Alcoholics Anonymous meetings, and presented strong evidence of rehabilitation (I.J. at 6, 13). We consider that the parties stipulated to the testimony of an alcohol and drug counselor, who stated that the respondent has little risk of relapse (Tr. at 65-67; Exh. 2A-IV). While this is laudable conduct, and we have no doubt that the respondent's removal will result in emotional and other hardship for his immediate family, we agree with the Immigration Judge's ultimate conclusion that the favorable factors of record do not outweigh the unfavorable, thereby establishing that adjustment of status is not warranted in the exercise of

¹ The respondent's spouse had filed a visa petition on his behalf which was approved, thereby facilitating his eligibility for adjustment of status. They married in 2010, but had been together for many years before that (I.J. at 3). The respondent's wife testified as to the close family relationship, and attested to the respondent's sobriety.

A (b) (6)

discretion. *See Matter of Arai*, 13 I&N Dec. 494 (BIA 1970); 8 C.F.R. §1003.1(d)(3)(iv) (the Board has de novo review authority over discretionary determinations).

The respondent's past history of driving under the influence, which occurred over an extended period of time, represents flagrant disregard for the safety of others, and a continued disrespect for the laws of this country. Notably, the respondent spent one year in jail for his last conviction, which involved a crash (I.J. at 5-6). There are also a few other negative factors of record, including the respondent's failure to pay his income taxes on a regular basis, and that he worked for a lengthy time in the United States without authorization. While these latter factors alone might not tip balance of the equities, when combined with the respondent's serious criminal history, they support the conclusion that he does not warrant a favorable exercise of discretion.

On appeal, the respondent raises several arguments concerning the Immigration Judge's conduct during the hearing. Upon careful consideration, we determine that a remand is not warranted, as the respondent has not established that there was any evidence or arguments he was unable to provide below, or that he was otherwise unfairly precluded from presenting his case. Further, we have de novo review authority over the discretionary determination at issue, and have not relied on any of the Immigration Judge's speculative, seemingly sarcastic, or otherwise unnecessary comments during the hearing, such as (b) (6) observations about Mothers Against Drunk Driving, and what occurred during the respondent's criminal proceedings (*see e.g.*, Tr. at 32, 41, 45-46, 47, 49-50, 52, 59-63, 122-23, 126-27). Rather, we rely only on the negative factors specifically addressed in our decision. We do question the Immigration Judge's conduct at the hearing insofar as (b) (6) examined the respondent extensively (Tr. at 25-64), and permitted the DHS attorney to examine the respondent (Tr. at 75-105), before the respondent had the opportunity to present direct testimony. The respondent bears the burden of proof to show eligibility for relief, and this augments towards permitting the respondent to present his claim first. We also caution the Immigration Judge not to conduct proceedings in a manner which can be construed as prosecutorial in nature. Despite our concerns, however, we find that the respondent has not established any prejudice resulting from the Immigration Judge's conduct.

(b) (6)

Matter of D-, 20 I&N Dec. 827 (BIA 1994); *Matter of Tomas*, 19 I&N Dec. 464 (BIA 1987). Most notably, as we stated earlier, the respondent has not established that he was unable to present his case, or that any evidence exists which would tip the balance of the equities in his favor upon our de novo review. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.


FOR THE BOARD

DISSENTING OPINION: (b) (6) Board Member, respectfully dissents without separate opinion.

IMMIGRATION COURT

(b) (6)

In the Matter of:

Case No.: A(b) (6)

(b) (6)

Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on March 16, 2012. 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 Mexico 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 appropriated documents necessary to give effect to this order.
- Adjustment of Status under Section 245 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.
- Proceedings were terminated.
- Other: _____

(b) (6)

DATE:

3/16/12

Immigration Judge

Appeal: ~~waived~~ / Reserved By: Respondent
Appeal Due By: 4/16/12

ALIEN NUMBER: (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 (b) (6) [X] ALIEN'S ATT/REP [X] DHS
DATE: 3/19/12 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: A (b) (6)

March 16, 2012

In the Matter of

(b) (6)

RESPONDENT

)
)
)
)
IN REMOVAL PROCEEDINGS

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act - alien present in the United States without being properly admitted or paroled.

APPLICATION: Adjustment of status pursuant to Section 245 of the Act.

ON BEHALF OF RESPONDENT: (b) (6)
Attorney
(b) (6)

ON BEHALF OF DHS: (b) (7)(C)
Assistant Chief Counsel
Homeland Security, (b) (6)

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 40-year-old married male native and citizen of Mexico. He was served with a Notice to Appear on March 17, 2010. Exhibit 1. The Notice to Appear charges that

the respondent is removable under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act in that he is an alien present in the United States without being properly admitted or paroled.

The respondent, through counsel, admitted the factual allegations in the Notice to Appear and conceded that he is removable. Accordingly, I find there is clear and convincing evidence to establish that he is removable as charged. Mexico is designated as the country of removal.

Respondent has applied for adjustment of status pursuant to Section 245 of the Act. The issue before the Court today is his eligibility for this form of relief.

STATEMENT OF FACTS

The Notice to Appear has been marked and admitted as Exhibit 1. Additionally, the following documents have been marked and received into evidence: Exhibit 2 was the I-485 application for adjustment of status; Exhibit 2-A was a group exhibit of documents in support of that adjustment of status to include the prior I-130 approval notice, current I-130 approval notice, background checks, affidavits of support, and other supporting documentation; Exhibit 2-B, over DHS objection, was the respondent's criminal history chart outlining his criminal history; Exhibit 2-C was respondent's 2011 tax return with attachments and respondent's co-sponsor 2011 tax returns and copy of naturalization certificate. It is noted that in respondent's list of witnesses, there was to be testimony from a

David Ebarbos. This case started on Thursday evening, completed Friday morning. That individual returned back to Albuquerque, New Mexico, but the Court was satisfied based on the reports provided by that individual that this Court will take into consideration provided that individual's information to be part of the record.

As to witnesses, the respondent first testified in support of his application. His testimony is as follows.

Respondent states he is age 40, married to a naturalized U.S. citizen, (b) (6). They were married in 2010 apparently after his Notice to Appear was issued. He states he has known his wife since approximately 1998, that they have two children, (b) (6), age 13, and (b) (6), age 9. These children are both in good health and attend school.

According to the respondent, he was married previously to an individual in New Mexico. Apparently he believes married approximately 15 years ago, but that after a short time, perhaps a month or two, were separated. However, for whatever reasons, it was not until 2010 according to the respondent that he divorced this individual and then moved on to marry his present wife. Respondent states that he lives in a house with his wife and two children that they are purchasing.

According to the respondent, he entered the United States approximately 15 years ago, has never left the United States and never been granted voluntary departures.

The Court then reviewed respondent's work history. To that end, the respondent states that he has worked mostly in the construction field over the years that he has worked in the U.S. Respondent states that for most of those years he did not have documents to work in the United States and often would be paid in cash. More recently, there was apparently work authorization provided to the respondent that he has utilized.

The respondent states that over the years he has not filed taxes for income earned. Again, it appears that the respondent believes that taxes would only be owed on income earned if it was paid by check and perhaps with the issuance of a W-2 statement. When questioned further, respondent testifies that in 2009 he was incarcerated and earned no money. In 2010 respondent believes he may have earned approximately \$3,000 for the year. In 2011 the respondent states again that there was little work to be had. He believes he earned around approximately \$4,000 for the year. Respondent notes that he had again worked for a company that presently has no business for him to work that would issue W-2 statements and that his present work involves various construction companies that he works for apparently again getting paid in cash. Respondent believes that when he does work, he could earn approximately \$200 per week.

Respondent testifies that his wife works in the school field apparently as a teacher assistant and earns approximately \$700 every two weeks.

The respondent testifies that to his knowledge his family does not receive any Government support to include food stamps, but that his brother apparently on a fairly regular basis for a lengthy period of time has given approximately \$100 every two weeks to help offset expenses of respondent's two children.

The Court then questioned the respondent as to his criminal history. As noted, his criminal history is reflected in group Exhibit 2-B that reviews respondent's criminal history.

The Court will simply note that respondent testified to some degree of accuracy as to the numerous criminal arrests that he has encountered in (b) (6) for in large part driving while intoxicated. He states often these times were as a result of drinking with friends and then driving home and being stopped for some infraction of law where the police determined he was over the legal limit of alcohol use and was further processed for that criminal violation. Respondent does acknowledge that the bulk of these arrests resulted in convictions and that the respondent spent various times in jail initially and that the final conviction in 2007 resulted in apparently a one-year confinement. His convictions also included requirements to attend programs and classes and pay fines. Also, some of these convictions apparently included convictions not only for driving while intoxicated, but for not having a license or insurance for the vehicle being driven. Respondent does acknowledge that the 2007 incident apparently involved respondent crashing into

something with some degree of damage that resulted in his arrest by police.

From what respondent recalls, he saw various Judges over the years for these various arrests and convictions, and to some degree perhaps was given some advice/concerns by those sitting Judges based on respondent's apparent continued ongoing criminal history dealing with alcohol and driving.

Accordingly, the respondent, after his last incident in 2007, he has stopped and not used alcohol since. He further informed the Court that he has been very active in Alcoholics Anonymous attending classes on a frequent basis, perhaps as much as several times a week, when he was released from his jail sentence.

Further, he has taken advantage of counseling opportunities, both those provided by Court direction, as well as apparently those conducted on respondent's own time, which would include in part monthly sessions with (b) (6), whose reports are part of the record.

Respondent also acknowledges to some degree that there was a potential in all these driving while intoxicated offenses that there could in fact have been serious harm to individuals on the road when respondent was driving while drunk. Respondent also indicates that there could have been harm to his own children potentially if they were in the vehicle that respondent was driving at the times when he was drunk.

Government was provided an opportunity to examine respondent. Respondent confirmed again his marriage in June, 2010, that his two children attend school, and that he does spend time with his children after school. Further, respondent is active in his church; documentation provided showing volunteer time, as well as normal church attendance.

Respondent states that his present work is apparently for cash. Respondent confirms again that there is no Government assistance to his family; that his brother does every several weeks for the last several years give some funds to help offset expenses for the family.

Discussion was had once again with respondent's criminal history. The parties confirmed that it appears the respondent, based on the criminal history chart, had eight separate driving while intoxicated offenses and that six of these resulted in convictions. Respondent states again that since 2007 he has not drank alcohol. Respondent also acknowledges that he is basically not permitted to drive any further unless he meets certain restrictions and that he enlists the aid of friends and his wife when he needs to go to places to include work and his AA meetings and church.

Respondent states that he is aware that he has been offered opportunities to take medication that would potentially ensure respondent no longer used alcohol because of the effects of the drug with alcohol use, but that respondent has chosen not to use

such medication, but instead, simply does not drink. He believes his time more well spent with his family and attending AA classes demonstrates that he has no desire to drink further.

Respondent's counsel had the opportunity to examine the respondent. Respondent once again states he has not used alcohol since his last arrest in 2007 and that he has had opportunities to go for counseling with Mr. Ebarbos and has done that counseling now almost monthly.

Respondent believes he has a better relationship with his wife and children after being released from prison.

The Court then confirmed with respondent that his total jail time would be in excess of one year for the various convictions, but he believes less than two years total time.

When questioned, respondent believes that he would not have been drinking in excess and driving other than the times that he was arrested by authorities. Respondent was informed by this Court that that seemed highly unlikely that authorities would have caught him every single time that he drank in excess and drove.

Turning briefly to the 2011 tax returns, respondent was directed by this Court that it appears based on prior testimony that his income in 2011 is not totally reflected on the tax returns that year that he filed with his wife wherein they received a substantial tax refund. Further, the 2010 tax return filed by respondent's wife does not include any income that the

respondent apparently earned. Again, a significant tax refund was given back to the family.

Respondent was provided an opportunity to describe any other hardship to his family if he is removed. To that end, the respondent states that there would be suffering for the family, challenges to pay bills to include the mortgage and other household bills. Further, respondent believes that his ability to help his children and see them grow and do well would be seriously challenged if he is not there to provide such attention.

Testimony was then taken from respondent's wife. Her testimony is summarized as follows.

The witness states that she is a naturalized citizen she believes in 2004 and that she is age 36, married to the respondent. According to the witness, they have been together since 1998 and have two children together. After her husband's prison sentence and release from Immigration custody, they were married in June, 2010.

The witness states that she is aware of respondent's eight DWI arrests, even though for the first at least arrest, she was not with the respondent, but he informed her of such. The witness states that according to her belief, her husband, the respondent, has not used alcohol since his last arrest in 2007.

Further, the witness states that after his last arrest, that she saw a noticeable change for the better with her husband and that he seemed to help more at home, be involved with

church, attend AA meetings that she would drive him to. Also, while the respondent was in prison, she did visit him approximately twice per month, at times with the children. The witness does believe that prior to 2007, her husband had a drinking problem and that there were family problems based on this alcohol use. Once again, the witness believes that she would know if the respondent had used alcohol since 2007. She believes he has not.

The witness states that her children adore the respondent and that they play and spend time with homework together. She believes there would be a great effect on the children, as well as her, and they would all be very sad and devastated if the respondent could not remain with them in the U.S.

The witness indicates that prior to 2007, the respondent may have made promises to her no longer to drink, that those promises were in fact broken based on subsequent arrests, but that after the last incident, he did keep his promise she believes to no longer drink.

The witness states that she had a tax preparer help assist in tax returns and that she would not knowingly file incomplete or false tax returns. On cross-examination, the witness maintains again that the tax returns were prepared to the best of her ability and that her husband really did not have much knowledge on how tax returns would have been filed.

According to the witness, prior to 2007 the respondent

would drink on weekends and times after work and apparently would drink before coming home, and drive home drunk. She believes his drinking could have been as much as several times each week. She further states that she would not place herself in respondent's vehicle when he had been drinking. In addition, the witness states that they did have marriage problems when he drank, but none of these problems resulted in physical violence.

The Court then questioned the witness. The witness confirms that she does work full-time in the Head Start program, earns approximately \$760 every two weeks. She does acknowledge that this income is more than the respondent has earned over the years he has been working. She further testifies that she is physically able to work and is in good health. The witness does acknowledge that since she does work full-time, she is not there to see the respondent the entire day to ensure he is, in fact, not drinking, but again, she maintains she would know if he had been drinking since 2007.

The witness was asked as to any other hardship if the respondent could not remain in the U.S. To that end, the witness states that it would be difficult for her and the children not to have her husband, their father, with them together, as is the case presently. Also, she believes it is possible that he could obtain better employment that could provide better for the family.

At the conclusion, both sides presented their closing

statements to include Government's position they oppose the requested relief of adjustment of status. Further, both parties agree that the respondent could not be considered for voluntary departure since he has served in excess of 180 days in prison, which would preclude a finding of good moral character within the last five years. See Section 101(f)(7) of the Act.

STATEMENT OF LAW

Adjustment of status is available for aliens physically present in the United States who may have entered the United States without inspection, but that are the beneficiary of a petition filed before April 2001 and in the possession of a current approved visa petition and, therefore, may apply to the Attorney General for the adjustment of status to that of a lawful permanent resident. Section 245(i) of the Act.

FINDINGS OF THE COURT

The Court has taken into consideration and applied the applicable statute and regulations dealing with adjustment of status pursuant to Section 245 of the Act. To that end, the Court notes the following.

While the respondent is in the United States without being properly inspected or admitted, he does have a prior approved petition that would permit him to be considered for adjustment of status pursuant to Section 245(i) of the Act.

While the Court does acknowledge that in the absence of adverse factors, adjustment of status is usually granted to

individuals. See Matter of Arai, 13 I&N Dec. 494 (BIA 1970); Matter of Lam, 16 I&N Dec. 432 (BIA 1978).

However, the mere fact that an individual is eligible for adjustment of status does not mean that a Court simply rubber stamps such request. To that end, the Court has looked closely at respondent's background and history while in the United States.

First, on the positive side, the Court will note that the respondent does have a wife and two children, U.S. citizens in the United States that he has lived with for a number of years. Further, that the respondent, while perhaps illegally, nonetheless has been in the U.S. for approximately 15 years. Further, the respondent does apparently do some volunteer work for his church organization. In addition, respondent as a regular attendee of Alcoholics Anonymous in (b) (6) apparently also volunteers his time and encourages other people with an appropriate need to attend AA. Further, the Court will acknowledge that the respondent since 2007 arguably has not used alcohol and has seen in effect the errors of his way.

However, the Court cannot and will not lose sight of respondent's extensive criminal history while in the United States. As noted, the respondent has been in the United States for many years illegally and during those illegal years has been a repeated offender of the laws of the United States. Clearly, the respondent has had an alcohol problem for many years. While

respondent's counsel in part argues that this could be considered a disease, the Court believes that the respondent would have had sufficient control and ability to reconsider his violations of law based on the repeated times that he has come contact with law enforcement authorities and criminal justice system. That is, respondent's own documentation demonstrate he has been involved with driving while intoxicated offenses since 1995 with offenses subsequent in 1997, three in 1998, two in 2001, and the ultimate one in 2007. As the parties confirm, it appears to be eight driving while intoxicated offenses with six convictions.

Clearly, this is not an isolated incident for the respondent's lack of good behavior over the years. Clearly the respondent was informed to some degree with each of these convictions by a Court the importance of following the law and obeying the law and not having future criminal activities. For whatever reason, the respondent chose to break any promises he may have made to those Courts as well as to his wife, and continued to commit criminal acts.

As he committed continued criminal acts, the forms of punishment became more severe to include the last incident that apparently involved some apparent damage to property where the respondent spent, this Court believes, a significant period of time, one year, in jail. While it is true the respondent seemed to change his life around in 2007, the record before this Court

shows again a history of repeated violations dealing with driving while intoxicated.

While these crimes may not be considered crimes involving moral turpitude, they nonetheless, to this Court's belief, indicate more than just a lack of or a showing of poor judgment on behalf of the respondent. Instead, it shows this Court that the respondent put potentially people over the years in (b) (6) (b) (6) in harm's way by his flagrant acts of violations. Even when the respondent's drivers licenses were suspended, the respondent still chose to drink and drive.

The Court also finds unbelievable that respondent only drank to excess and drove on the times he was arrested by police. The Court fully believes that there was many more times that the respondent over the years drank to excess and drove on the roads putting again not only himself, but as importantly, others in potential harm by his gross conduct.

The Court will also note that respondent's years of illegal work in the United States also calls into question respondent's good moral character, as is the case with his numerous DWI's. Respondent seems to think there is a distinction between being paid in check with W-2's and cash. It appears to this Court that the respondent has taken advantage of the tax systems and not reported all income earned. Apparently, the only income reported was in 2011, and the Court believes not all was properly reported. The end result were again significant tax

refunds to the family in excess of \$7,000 in at least 2010 and 2011, which this Court believes were inflated refunds based on improper filings. The fact that respondent may not be familiar with tax filings this Court believes is not a proper justification for his acts since he knew full well whether he wishes to acknowledge or not that he was earning money in the U.S. and that it would appear to a reasonable person that some individuals from the Federal Government would want all income reported.

Based on respondent's long-term and numerous convictions for driving while intoxicated with no license and insurance on several occasions and his violations of tax reporting, the Court will find the respondent's negative factors outweigh the positive factors in a favorable consideration for this request for adjustment of status.

While the Court notes that the respondent is not required to file a 601 waiver based on the type of convictions he suffered, the Court still looks to the hardship to the family members respondent may leave behind if removed. To that end, the Court notes that respondent's wife apparently is gainfully employed and in fact, based on all accounts, earns more than the respondent. While there would be some emotional concerns for the respondent's wife and children if he is not there with them, those are the consequences of respondent's actions, which this Court again believes he had the ability to better control with

all the opportunities he had over the years.

Therefore, the Court believes the respondent is not a good candidate for adjustment of status to that of a lawful permanent resident and will, therefore, not grant respondent his requested relief.

ORDERS OF THE COURT

Accordingly, the following orders are hereby entered:

ORDERED the respondent's application for adjustment of status pursuant to Section 245 of the Act is denied.

IT IS FURTHER ORDERED that the respondent be removed from the United States to Mexico on the charge contained on the Notice to Appear.

(b) (6)
Immigration Judge

1 A. No.

2 Q. Since coming to the U.S., have you filed taxes on
3 earned money in the U.S.?

4 A. No.

5 Q. Why not?

6 A. Because I, I got paid in cash.

7 Q. Well, do you think that makes a difference to the
8 Government?

9 A. I don't know.

10 Q. Well, did you ever check into it?

11 A. No.

12 Q. Well, would you be surprised to find out the
13 Government's willing to have people file taxes no matter how
14 they are paid?

15 A. Yes.

16 Q. For example, in 2009 were you working?

17 A. Two thousand nine? No.

18 Q. Not for the entire year?

19 A. No.

20 Q. What about 2010?

21 A. In 2010 I worked for a little bit.

22 Q. Roughly, how much do you think you earned in 2010?

23 A. Oh, about 4,000 or \$3,000.

24 Q. And what about last year, 2011, did you work?

25 A. In 2011, I worked for some time when I got my Social

1 Q. What was your punishment then?
2 A. Well, also I had programs.
3 Q. Alcohol programs?
4 A. Yes.
5 Q. What about jail time? Any jail time?
6 A. From that time, I don't recall.
7 Q. Do you believe you complied with the terms of the
8 Judge's order for that case?
9 A. Yes, yes, I did.
10 Q. Did you learn any lessons that second time?
11 A. Well, yes.
12 Q. What lessons were those?
13 A. Well, not to drink as much.
14 Q. But apparently you were arrested again?
15 A. Yes.
16 Q. When was that?
17 A. In 2008.
18 Q. I'm sorry, what year?
19 A. Ninety-eight. Ninety-eight.
20 Q. So the next year again you were drinking and driving?
21 A. Yes, yes.
22 Q. Guess you didn't learn a lesson then, did you?
23 A. Yes.
24 Q. What drove you -- or why did you choose to drink that
25 day?

1 Q. So why were you drinking then?

2 A. Well, that's because I was there with a friend, and I
3 drank some with a friend there.

4 Q. Well, did someone force you to drink?

5 A. No.

6 Q. Well, why'd you think it was -- why do you think you
7 should be drinking then with your friend based on your previous
8 experience, sir?

9 A. Well, it's because I get out of work tired, and I --
10 it just seems an easy thing to do.

11 Q. Well, it's one thing to drink, but then you chose to
12 drive again, correct?

13 A. Yes. Yes.

14 Q. And you were already together with your wife several
15 years then, correct?

16 A. Yes.

17 Q. Well, did she know where you were at the time?

18 A. Yes.

19 Q. Well, was she with you?

20 A. No.

21 Q. Was she home?

22 A. Yes, she was.

23 Q. Does she drive?

24 A. Yes.

25 Q. Ever think about giving her a call seeing if she could

1 pick you up?

2 A. No, honestly I didn't think. I didn't think.

3 Q. Well, doesn't that make sense, sir? Maybe it would've
4 been better for her to be driving you instead of yourself?

5 A. Yes.

6 Q. Well, I guess the police stopped you then, too,
7 correct?

8 A. Yes.

9 Q. Anybody else in the car then?

10 A. No.

11 Q. What'd the Judge do to you that time?

12 A. Well, he gave me again programs.

13 Q. Jail time?

14 A. No.

15 Q. That's surprising.

16 A. Yes.

17 Q. What'd your wife think about that?

18 A. No, well, she thought that [indiscernible]. No, in
19 2001, yes, I did get four months.

20 Q. So they increased the jail time, correct?

21 A. Yes. Yes. Yes, they gave me four months in 2001.

22 Q. Do you think they were trying to give you a stronger
23 message perhaps?

24 A. Yes.

25 Q. Now, your son (b) (6) was already born then, correct?

1 A. Yes.

2 Q. Would it have bothered you if he was in the car with
3 you when you were pulled over?

4 A. Yes.

5 Q. Why?

6 A. Well, because something could've happened to him.

7 Q. Well, what about other people on the road who might
8 have their four-year-old children in the car? Something
9 could've happened to them, too, correct?

10 A. Yes.

11 Q. And you might've been able to stop your son from going
12 in your car, but perhaps the other people on the road were not
13 expecting to see you on the road that day. Is that a fair
14 statement?

15 A. That is true.

16 Q. You ever think about that?

17 A. Afterwards, yes.

18 Q. Well, if you say afterwards, maybe you thought twice
19 about drinking and driving after 2001. Did you think about
20 that?

21 A. Yes.

22 Q. You had four months in jail to think, correct?

23 A. Yes.

24 Q. Well then, I should not see any more arrests after
25 2001, correct?

1 A. Yes, that is true.

2 Q. Well, were you ever arrested after 2001?

3 A. Yes, in 2007.

4 Q. And what happened then?

5 A. I was coming from work.

6 Q. And?

7 A. And a policeman stopped me.

8 Q. And why'd he stop you?

9 A. Because I was coming from (b)(6), and there was a
10 car parked in the highway, and I didn't want to hit it. The
11 lights were off, and it was during cold time, cold season, and I
12 didn't want to hit it through the back. I went to the side, and
13 I hit a, a [indiscernible] wall, and then the, the police
14 arrived, and I had 20 beers in the truck, and I got arrested.

15 Q. Before we discuss that further, sir, were there in
16 fact two separate DWI's in 2001?

17 A. Yes.

18 Q. So when I ask you questions, you needed to let me know
19 if they were totaling with more than one situation, more than
20 one incident in the same year, okay?

21 A. Um-hum.

22 Q. Yes or no?

23 A. Yes. Yes.

24 Q. So why two DWI's in the same year in 2001?

25 A. Because I was also arrested because I had a beer.

1 Q. Quite frankly, sir, this doesn't sound like an
2 impressive record, does it?

3 A. Yes.

4 Q. So I presume this situation in 2007 with the empty
5 beer containers in your vehicle, that, that maybe you were
6 drinking again?

7 A. Yes, I had drank some beer.

8 Q. After work?

9 A. Yes.

10 Q. And you almost hit a vehicle? Is that correct?

11 A. Yes.

12 Q. So did, did someone actually get hurt?

13 A. No, no.

14 Q. But it was possible, correct?

15 A. Yes.

16 Q. Anybody else in your car?

17 A. No.

18 Q. Did you have a driver's license then?

19 A. No.

20 Q. Well, once again, sir, it's strange to me how you keep
21 drinking and driving without a driver's license. You had two
22 children at that time, correct?

23 A. Yes.

24 Q. I guess you didn't think too much about them because
25 there was a good chance you might never see them again.

1 A. That is true.

2 Q. So how would that have worked for your wife if she was
3 left alone with the kids?

4 A. No, well, that would've been bad.

5 Q. So what did the Judge do to you that time?

6 A. He gave me one year in jail.

7 Q. Had you seen this Judge before?

8 A. No.

9 Q. Well, interesting how you get to see a Judge -- a
10 different Judge each time. Do you think that Judge was upset,
11 though?

12 A. No. Well, he got upset. He was very upset and told
13 me that I needed jail. He gave me one year of jail time, and he
14 gave me two years probation.

15 Q. Were you surprised about the punishment?

16 A. Well, honestly, the punishment was fine because they
17 hadn't given me a punishment before, and, and this time, the
18 punishment was harsh.

19 Q. Where'd you serve the time?

20 A. Yes.

21 Q. Where did you serve the time?

22 A. In (b) (6)

23 Q. Was it in a jail, in a prison?

24 A. In prison.

25 Q. Did your family come see you then?

1 A. Yes, they went very often, every 15 days, once a
2 month.

3 Q. Your wife?

4 A. Yes, and the children.

5 Q. So how'd the children take that?

6 A. Well, at the start they seemed very sad.

7 Q. Would you be surprised?

8 A. Yes.

9 Q. I guess after the visit they got to go home, but you
10 got to stay there, correct?

11 A. Yes.

12 Q. So you had some more time to think about things?

13 A. Yes, I had a lot of time this [indiscernible].

14 Q. Did you make any decisions then?

15 A. Yes.

16 Q. What were those?

17 A. Not to drink again. Well, since 2007 from the last
18 arrest, from the last arrest, I have not drank again.

19 Q. We'll get to that. So again, what lessons did you
20 learn?

21 A. Well, not to drink again because I spent a lot of time
22 away from my family.

23 Q. Well, sir, let's make sure we're distinguishing things
24 now. Drinking is one thing; driving is another. In and of
25 itself, drinking is not illegal. You understand?

26 Q. Well, sir, let's get to that. So again, what lessons did you

1 A. Yes.

2 Q. Driving and intoxicated could be illegal.

3 A. Yes.

4 Q. Do you think you have a drinking problem, sir?

5 A. No, I go very often to the group of Alcoholics
6 Anonymous, double A. Since I left prison, I've been there
7 constantly, and they help us a lot there.

8 Q. Okay, so I'll ask it again then, sir. Do you believe
9 you have a drinking problem?

10 A. Well, I guess that there at the, at the A group,
11 peoples that have been there for 30 years say that one will
12 always have that problem. What one, one has to do is assist
13 there.

14 Q. But I think you're understanding a little bit better
15 now, sir. So perhaps you have a drinking problem, yes or no?

16 A. Yes. Yes.

17 Q. And that's part of the things that they teach at AA as
18 far as acknowledging problems and trying to deal with those
19 problems?

20 A. Yes, to acknowledge and recognize that one has
21 problems with alcohol.

22 Q. So that might be a life-long problem you have to deal
23 with, correct?

24 A. Yes, to be there and in there, yes.

25 Q. So how do you plan to deal with that problem?

1 order of deportation.

2 Q. Well, not exactly. The charge is that you are in the
3 United States illegally since 1998. Correct?

4 A. Correct.

5 Q. And you've had some people file petitions on your
6 behalf?

7 A. Yes, my father.

8 Q. And now your wife.

9 A. Yes.

10 Q. So you tell me why you think I should even consider
11 you to have your status adjusted to that of a lawful permanent
12 resident based on your background.

13 A. Why I think so?

14 Q. Yes, sir. I assume that's what you want me to look
15 at.

16 A. Yes. Well, for my family, my children, my wife, for
17 myself.

18 Q. Well, your wife and children haven't done anything
19 wrong, have they?

20 A. Yes, so I can be close to them and for me to be close
21 to them.

22 Q. What I'm saying is your wife and children have not
23 done anything wrong, have they, sir?

24 A. No.

25 Q. So why do they need help?

1 A. So I can be here and help them, so I can work and to
2 be close to them.

3 Q. Well, could it be because of your actions that you may
4 not stay here?

5 A. Yes.

6 Q. Do you know what my choices are, sir?

7 A. No.

8 Q. One of those is to go back to Mexico, isn't it?

9 A. Yes.

10 Q. And if you think one year being away from your family
11 is long, how do you think the rest of your life would be?

12 A. A lot of -- a long time.

13 Q. Well, as in forever.

14 A. No, well, that would be a lot.

15 Q. Well, sir, I'm just looking at your background. One
16 wants to understand how long it takes and what it takes for --
17 to get somebody's attention. Most people once, twice, maybe
18 three times before they get their attention. Would you agree?

19 A. Yes.

20 Q. So why are you different? Why did it take so many
21 times to get your attention?

22 A. Mistakes.

23 Q. Who's mistakes?

24 A. Mine.

25 Q. I see on one of the reports I see reference to taking

1 some type of medication, something that maybe would make sure
2 that you don't drink. Do you know what I'm talking about?

3 A. Yes.

4 Q. So have you looked into that?

5 A. Yes.

6 Q. Are you taking those medications?

7 A. No.

8 Q. So where do we stand on that?

9 A. Well, what -- I don't understand.

10 Q. Well, I'm just saying are you contemplating looking at
11 that medication? That's one of -- what one of the reports
12 indicate. I'm just curious.

13 A. Oh, no.

14 Q. So you do not plan to take the medication? You don't
15 believe it's necessary?

16 A. No.

17 Q. Do you presently have a driver's license, sir?

18 A. No, I cannot drive.

19 Q. And that's a permanent bar, isn't it?

20 A. Yes.

21 Q. So how do you get back and forth to work?

22 A. My friends go for me.

23 Q. So I'm sure your friends don't appreciate that, do
24 they?

25 A. No.

1 Q. So you're an extra burden on them because you can't
2 drive in the state, correct?

3 A. Yes.

4 Q. How far do you live from work?

5 A. Oh, about six or seven miles.

6 Q. Others --

7 A. Different jobs, different parts.

8 Q. I see. Sir, have you ever heard of Mothers Against
9 Drunk Drivers?

10 A. Yes.

11 Q. What is that group?

12 A. Al-Anon?

13 Q. No, Mothers Against Drunk Drivers, have you heard of
14 that group?

15 A. No.

16 Q. Basically, their group has concerns about people like
17 you on the streets. Sometimes they have meetings. Sometimes
18 they have gatherings, educate people about people drinking and
19 driving and harming people. So you've not heard of them?

20 A. No.

21 Q. Perhaps you can give me some more information so you
22 can educate yourself?

23 A. Yes.

24 Q. They might have similar concerns as you may have now,
25 especially since you have children that could be harmed by

1 people if they place themselves in your situation, drinking and
2 driving again.

3 A. Yes.

4 Q. In fact, they might even like volunteers like you that
5 can talk from experience.

6 A. Yes.

7 Q. That's something you might look into for me?

8 A. Yes.

9 Q. Sir, did your wife or you file tax returns for last
10 year, 2011?

11 A. Yes.

12 Q. Who filed?

13 A. Oh, 2011? Yes, 2011.

14 Q. Well, I'm just asking because I don't have those here.

15 A. No, just for this year, 2011.

16 Q. Once again, did you or your wife file for last year,
17 2011? They would be due around now.

18 A. Yes, we did it jointly.

19 Q. I can get a copy of that?

20 A. Yes.

21 Q. Did you report all the incoming you earned?

22 A. Yes.

23 Q. Whether in cash or check or other means?

24 A. Yes, yes.

25 Q. Now your wife filed 2010 tax returns, but I don't see

1 four years?

2 A. No.

3 Q. How much time do you believe you actually spent in
4 jail for all the DWI's?

5 A. Less than two years.

6 Q. But at least one year, correct?

7 A. Yes. Yes, one year, yes.

8 Q. Because the last time in jail was actually a year
9 served in jail, correct?

10 A. Correct.

11 Q. But when you add up all the other times that you
12 might've spent a month or two months here, that's where you're
13 over one year, but less than two years to your knowledge?

14 A. With everything.

15 Q. Thank you. Now, sir, do you believe that you over the
16 years could have been drinking and driving other than the times
17 when you were arrested these eight times?

18 A. No, I don't think, no.

19 Q. So let me ask it this way. Do you think the only
20 times you were drinking and driving in excess of legal alcohol
21 limits were times that you were arrested, caught by the police?

22 A. Yes.

23 Q. Now see, no, sir, I find that hard to believe. While
24 I believe law enforcement is out working hard, I can't believe
25 that it just happens that the only times you were drinking in

1 excess and driving were the eight times you were arrested over
2 the years.

3 A. Yes, I was drunk that time, but other times I had
4 drunk the -- only a beer or so.

5 Q. Well, we'll never know, sir, because we don't have
6 arrest records, okay? But just so we're clear, I believe
7 there's a strong likelihood that there were other times -- how
8 many, I don't know -- that you were perhaps also drinking in
9 excess and driving, but were not arrested. You understand?

10 A. Yes.

11 Q. Now just to reflect on these other documents I
12 received today, we do have a 2011 tax return for you and your
13 wife. You did fill this out with your wife, correct?

14 A. Yes.

15 Q. Now attached to the documents is a document from
16 (b) (6) in (b) (6) Is that the
17 company you said you were working for?

18 A. Correct.

19 Q. And you would've listed that on your wages on your tax
20 return?

21 A. Yes.

22 Q. Now this other amount of business income of around
23 \$1500, what income would that have been from?

24 A. Working.

25 Q. Would this be when you were working for other

1 recall telling me yesterday that in 2011, last year, you said
2 you earned around \$4,000 for the year?

3 (b) (6) TO JUDGE

4 Four hundred dollars?

5 JUDGE TO (b) (6)

6 Four thousand.

7 (b) (6) TO JUDGE

8 Yes.

9 JUDGE TO (b) (6)

10 Q. Well, sir, your tax returns don't appear to show at
11 least that amount was declared. Because I'll take your business
12 income of around 1500 with your work at this construction
13 company, and it comes over just a little bit \$2,000, Commercial
14 Enterprises. And I'm not here to argue, sir, but just to make
15 at least an observation, but I believe it's entirely possible
16 you did not report all the income in 2011 on your taxes.

17 A. That is what I worked with my Social Security.

18 Q. But I guess we keep going back to where you don't
19 think cash means you pay taxes, correct?

20 A. No.

21 Q. Well, it concerns me when people get tax refunds in
22 excess of \$7500 when they don't report all the income to the
23 Government. You understand?

24 A. Yes.

25 Q. And I think we've agreed as well in 2010 you filed no

1 taxes, correct?

2 A. No.

3 Q. In that year, your wife on behalf of the family
4 received over \$7,000 again in tax refund.

5 A. Yes.

6 Q. That concerns me, as well, sir. Is there any other
7 hardship you wish to tell me to your family if you are not able
8 to stay with them in the U.S.?

9 A. How?

10 Q. I don't know, sir. I'm just giving you that
11 opportunity.

12 A. What was the question?

13 Q. Again, is there any other hardship to your wife or
14 children you wish to tell me if you cannot stay with them in the
15 U.S.?

16 A. Yes.

17 Q. Go ahead.

18 A. Suffering. They would be struggling to make the house
19 payment. The bills, to help with the bills. Help with the
20 children. That is important.

21 Q. Anything else?

22 A. [Indiscernible] for all my family.

23 Q. Anything else you wish to tell me?

24 A. Well, the most important thing, to help my children
25 out. That is the most important thing. Because they are

Processing, FOIA (EOIR)

From: Davis, John (EOIR)
Sent: Tuesday, September 30, 2014 5:04 PM
To: Keller, Mary Beth (EOIR); Moutinho, Deborah (EOIR)
Cc: Calderon, Rosario (EOIR)
Subject: RE: IJC Memo - Matter of (b) (6), (b) (6), (b) (6)

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

Mary Beth and Deborah,

I can find absolutely nothing on this one!

How would you like to proceed?

Regards,

John W. Davis
Assistant Chief Immigration Judge
Executive Office for Immigration Review
United States Immigration Court
(b) (6) (GEO) (b) (6) (Downtown)
1961 Stout Street. Ste 3101
Denver, CO 80294-3003



From: Keller, Mary Beth (EOIR)
Sent: Wednesday, September 03, 2014 7:36 AM
To: Moutinho, Deborah (EOIR); Davis, John (EOIR)
Subject: RE: IJC Memo - Matter of (b) (6), (b) (6), (b) (6)

John,

This is a very old BIA referral involving Judge (b) (6), that I do not have anything in addition to the below on – The db does not even have the complaint nature. Would you please advise and send us any update/resolution wrt this complaint (number 785) ?
Thanks.

Mtk

MaryBeth Keller

From: Moutinho, Deborah (EOIR)
Sent: Tuesday, July 30, 2013 4:13 PM
To: Davis, John (EOIR)
Cc: Keller, Mary Beth (EOIR)
Subject: FW: IJC Memo - Matter of (b) (6), (b) (6), (b) (6)

Good Afternoon Sir

The attached case concerning IJ (b) (6) is being forwarded to you per ACIJ Keller's request.

Thank you
Deborah

From: Henderson, Suzette M. (EOIR)
Sent: Tuesday, July 30, 2013 2:10 PM
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 - Matter of (b) (6), (b) (6) (b) (6)

Good afternoon,

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

R/Suzette Henderson

Processing, FOIA (EOIR)

From: Davis, John (EOIR)
Sent: Tuesday, November 05, 2013 2:05 PM
To: (b) (6) (EOIR)
Cc: Keller, Mary Beth (EOIR); Kelly, Ed (EOIR); Calderon, Rosario (EOIR); Baeza, Theresa N. (EOIR)
Subject: Messages from EOIR

Importance: High

Follow Up Flag: Follow up
Flag Status: Completed

Judge (b) (6)

It recently came to my attention that you requested ALIA attorneys make an announcement, via email to their membership, regarding how docketing would be conducted at the (b) (6) Immigration Court in light of the recent shutdown. My understanding of the requested announcement is this - that Non-Detained Cases (Master Calendar hearings) that were cancelled in early October as a result of the shut-down would be rescheduled for some time next year. It went on to indicate that Individual Merits Hearings that were cancelled would “probably be re-set for several years out” due to the Court’s backlog. You then requested that attorneys with cases that they would like to be heard sooner rather than later, such as LPR Cancellations of Removal or straight-forward adjustments of status, should bring those cases to the attention of the Court so that an effort can be made to schedule them sooner, if possible.

You are not authorized to speak either for the (b) (6) Immigration Court, or the EOIR, we have a Public Affairs Office for that very purpose. While you may instruct the parties that appear before you in your court on how they may proceed, or how you would like them to proceed, making general pronouncements on behalf of the court or this agency is entirely inappropriate. And based on my reading and understanding of the requested announcement it is clear that you did discuss this with the Court Administrator under whose purview resetting the case and docketing fall!

While I understand your frustrations with the shutdown and the subsequent problems it has caused, I cannot abide you making generally pronouncement on behalf of this court, or this agency. As I stated I can understand your frustrations, since the announcement was not published I am only cautioning you, however I will also tell you that should this type of situation recur in the future I will take appropriate action.

The accuracy or inaccuracy of any proposed statements that you attempt to make is not relevant, what is pertinent is you speaking on behalf of the (b) (6) IC or this agency without authorization. As I mentioned we have a public affairs office for this very reason.

While I would hope that an IJ with your years on the bench and experience would well understand this, let this serve as a reminder to you to use only proper channels when attempting to communicate with the general public. Additionally, you IC is blessed with one of the finest Court Administrator’s in this organization. Had you asked her opinion on this matter she likely would have guided you in the proper direction, if you did seek her opinion and then ignored it you did so at your own risk!

Should you have any questions or wish to discuss this matter with me please feel free to call me when you return from leave. But do not repeat this conduct in the future.

Regards,

John W. Davis
Assistant Chief Immigration Judge
Executive Office for Immigration Review
United States Immigration Court
3130 North Oakland Street
Aurora, CO 80010

(b) (6)