



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

---

5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041

Milch, Aleksander B., Esq  
333 7th Avenue  
New York, NY 10001

U.S. DHS, Litigation Unit [REDACTED]  
[REDACTED]

Name: [REDACTED] [REDACTED]

Date of this notice: 5/12/2009

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:

Greer, Anne J.  
Neal, David L.  
Osuna, Juan P.

spignerc

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

---

File: A [REDACTED]

Date: MAY 12 2009

In re: [REDACTED]

IN ASYLUM PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANT: Aleksander B. Milch, Esquire

APPLICATION: Asylum, withholding of removal, Convention Against Torture

The applicant originally appealed from an Immigration Judge's [REDACTED] decision. On [REDACTED], this Board affirmed the Immigration Judge's decision. Thereafter, the applicant filed a petition for review with the United States Court of Appeals for the Second Circuit. The Second Circuit vacated the Board's decision, and remanded the case for reconsideration of the applicant's appeal. On [REDACTED] this Board remanded the case to the Immigration Judge for further proceedings and for the entry of a new decision. On [REDACTED], the Immigration Judge again denied the applicant's request for asylum, withholding of removal, and protection under the Convention Against Torture. The applicant now appeals from this [REDACTED] decision.

On appeal, the applicant challenges the fairness of the underlying hearing on his applications for asylum, withholding of removal, and protection under the Convention Against Torture. Specifically, he claims that the Immigration Judge was biased and had a predisposition towards a disfavorable ruling in his case.

From the outset, the Immigration Judge voiced his displeasure with the applicant's attorney (Tr. at 6-9), and at times during the hearing, the Immigration Judge took an unprofessional tone (Tr. at 9, 60-61, 108, 140, 144-45, 148). For instance, when the applicant was asking for a continuance to obtain previously unavailable documents, the Immigration Judge insinuated that the applicant was in the process of fabricating these documents. He stated:

Once we finally figure out what they are. And, apparently, once some of them are created. Because, frankly. . . they would be here by now. . . . And, as far as the Court is concerned, if these documents existed, there is no good explanation for why they aren't here now. . . . So, I suspect that what you're trying not to tell me is these are documents that are being created at this time. . . . [T]hey're actually making the documents now, . . .

Tr. at 9-10; *see also* I.J. at 26. The record is rife with such examples.

A [REDACTED]

In addition to the pervasive inappropriate tone during the hearings below, we are concerned that the Immigration Judge failed to adhere to the role of impartiality assigned to him as one acting in a judicial or quasi-judicial capacity. See *Schweiker v. McClure*, 456 U.S. 188, 195 (1982). For instance, the Immigration Judge continued the case, in part, so that he could independently investigate the applicant's claim and expert witness (Tr. at 116-17). During the continuance and upon significant effort, the Immigration Judge obtained newspaper clippings and two articles relating to the applicant's case (I.J. at 24; Tr. at 122, 137-39). After all the witnesses had testified, the Immigration Judge used these articles to impeach the applicant's expert and contradict his other evidence (Tr. at 140-45; I.J. at 24-26). Moreover, the negative conclusions drawn from these articles were not subject to cross-examination because the applicant's witnesses had already testified (I.J. at 25-26; Tr. at 141-42).

Upon review of the applicant's claim, we find that the Immigration Judge did not behave in a professional and impartial manner. See *Matter of Lam*, 14 I&N Dec. 168, 170 (BIA 1972) (stating that a trier of fact must be impartial and must not attempt to establish proof to support the position of any party to the controversy). As such, we find that a remand of the proceedings is warranted for a new hearing before a different Immigration Judge.<sup>1</sup> See *Islam v. Gonzales*, 469 F.3d 53 (2d Cir. 2006); *Guo-Le Huang v. Gonzales*, 453 F.3d 142 (2d Cir. 2006). Upon remand, both parties shall have the opportunity to present testimony and evidence on any application for which the applicant is eligible. We will also order that a different Immigration Judge preside over the remanded proceedings.

Accordingly, the following orders will be entered:

ORDER: The Immigration Judge's decision dated [REDACTED] is vacated.

FURTHER ORDER: The record is remanded to the Immigration Court for a new hearing before a different Immigration Judge and for the entry of a new decision.

  
\_\_\_\_\_  
FOR THE BOARD

<sup>1</sup> We also note that certain parts of the Immigration Judge's decision are too speculative (see, e.g., I.J. at 16-17).