

LEGAL NOTE

Removing Judges: The Cases of Immigration Judges Jeffrey Chase and Noel Ferris*

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In the past few years the Second Circuit took the extraordinary step of removing two immigration judges from cases for evincing inappropriate behavior and conduct toward asylum seekers in their courts. As a consequence, in each case the Second Circuit vacated and remanded these judges' decisions and ordered that further proceedings continue before different immigration judges. While the two cases are factually different, and indeed the behavior of one of these immigration judges seems somewhat more egregious than the other, they are remarkable in that removal of judges for inappropriate conduct is not all that common a remedy.

Immigration Judge Jeffrey Chase. Aoubacar Ba, a citizen of Mauritania, sought asylum in the United States, as well as withholding of removal and relief under the Convention of Torture. After an administrative review of his case, Immigration Judge (IJ) Jeffrey Chase denied Ba's application, a decision affirmed by the Board of Immigration Appeals (BIA), the final level of administrative review of immigration cases (No. A95 476 650 (B.I.A. Aug. 22, 2005), *aff'g* No. A95 476 650 (Immig. Ct. N.Y. City Mar. 26, 2004)). The Second Circuit Court of Appeals reviewed the BIA's decision in *Aoubacar Ba v. Gonzales* (228 Fed. Appx. 7, 2007) and held in a summary order that the case be remanded to the agency. Presiding over the case were Circuit Judges Robert Katzmann and Peter Hall, and District Judge David Trager sitting by designation.

While the Second Circuit listed a number of reasons on the merits for its decision to remand, what made this decision remarkable, however, was not the remand itself. Instead, the *Ba* opinion stands out for the court's public rebuke of IJ Chase. In particular, the Second Circuit ordered that all further proceedings in the *Ba* case not be held before IJ Chase. Additionally, due to numerous lapses in IJ Chase's judgment that raised doubts about the fairness of other immigration proceedings before him, the court further stated, "[I]t may improve judicial efficiency if, as discussed at oral argument, the BIA, *sua sponte*, closely re-examined all of [IJ Chase's] cases that are still on appeal" (at 11).

The Second Circuit began its review by stating that the standard of review of the agency's findings is based on the substantial-evidence standard. Expressing its disillusionment with IJ Chase, the court then qualified this standard of review by stating, "[W]e will vacate and remand for new findings if the agency's reasoning or its fact-finding process was sufficiently flawed" (at 9). The court then stated that IJ Chase's findings did not comport with the substantial-evidence standard. Additionally, his decision

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“contained a plethora of errors and omissions” (at 10). For these reasons, the court remanded the case for further proceedings before a different immigration judge.

Moving beyond the merits, Judge Katzmann then chided IJ Chase for inappropriate demeanor and comments during Ba’s hearing. Most galling to the court was a question IJ Chase asked of Ba that implicated the attorney-client privilege: “Regardless of the relevance of the inquiry and the answer, it is inconceivable that IJ Chase, as a judge and lawyer, would not know the impropriety of that question” (at 11). His questions and actions clearly diminished the appearance of impartiality of the proceeding in the eyes of the Second Circuit.

Critically, this was not the first occasion in which the Second Circuit reprimanded IJ Chase. The court cited two prior cases in which IJ Chase was rebuked for his behavior in published opinions. In *Guo-Le Huang v. Gonzales*, 453 F.3d 142 (2d Cir. 2006), a case unmistakably similar to the *Ba* case, the Second Circuit described IJ Chase’s behavior as wholly inappropriate. “[T]his is the rare case where remand is required because of the IJ’s apparent bias and hostility toward Huang. The hearings included several instances of questioning by the IJ that were at least inappropriate and at worst indicative of bias against Chinese witnesses” (at 150). The timing of his hearing before IJ Chase, on September 20, 2001, surely did not help Huang’s cause. A few months after the *Huang* opinion was released, the Second Circuit issued its opinion in *Islam v. Gonzales*, 469 F.3d 53 (2d Cir. 2006), where IJ Chase’s behavior on the bench once again was called into question. Apparently, *Huang* and *Islam* were not the only such cases. Citing a number of unpublished, summary dispositions, the *Islam* court stated, “By our count, this is the seventh time that we have criticized IJ Chase’s conduct during hearings” (at 56). The *Ba* case ostensibly signifies the eighth such case, and the third in which the Second Circuit felt justified in releasing an opinion regarding IJ Chase’s improper demeanor and actions.

Immigration Judge Noel Ferris. Jian Zhong Sun, a citizen of China, sought asylum in the United States as well as withholding of removal. His claims were denied by IJ Noel Ferris and affirmed by the BIA. In a summary decision by the Second Circuit Court of Appeals (*Sun v. Board of Immigration Appeals*, 247 Fed. Appx. 275, 2007), presiding Circuit Judges Richard Cardamone, Rosemary Pooler, and Robert Sack expressed, “As IJ Ferris’s conduct of the hearing creates a substantial uncertainty as to whether the record below was fairly and reliably developed, we remand for further proceedings before a different IJ” (at 278, citing *Islam v. Gonzales*, 469 F.3d at 56, a case involving IJ Chase).

The Second Circuit seemed concerned with two key events from the hearing before IJ Ferris. First, the court observed that the “IJ’s decision, which was speculative and conjectural, was not supported by substantial evidence” (at 277). In particular, the court believed that IJ Ferris projected her own beliefs about factual issues in China, both in general and with specific respect to Sun’s case. For instance, she claimed Sun left China because of an economic motive, even though a warrant for his arrest remained in effect in China. According to the *New York Times* report of the original asylum hearing, Sun testified that his wife was forced to obtain an abortion when she became preg-

nant, and that when she became pregnant a second time he was beaten by the authorities. An arrest order apparently was issued when Sun refused to be sterilized, after which he left China for the United States before the birth of his daughter (Bernstein, 2007). Moreover, while IJ Ferris's decision was technically correct that the documents referring to his marital status and his wife's forced abortion were not authenticated, the court stated, "We have never held that the Federal Rules of Evidence can serve to bar the introduction of a petitioner's relevant evidence in an asylum proceeding" (at 277).

Second, the court believed that IJ Ferris mischaracterized Sun's demeanor when she noted for the record that his response to testimony regarding his daughter was "way out of proportion" (at 277). Apparently, Sun became emotional when asked about his daughter, stating, "I'm crying because I have not seen my daughter in 11 years" (Bernstein, 2007). Based upon her attitude on the bench toward Sun, the Second Circuit noted, "A credibility finding rooted in flawed reasoning cannot stand" (at 277).

The court then removed IJ Ferris from the *Sun* case. Quoting from its circuit's *Islam* decision, 469 F.3d at 55-56, the court declared, "[W]hen, as here, an IJ firmly believes a petitioner is not truthful, repetitive verbally abusive comments and questions taint the proceedings, erode the appearance of fairness and call into question the results of the proceeding."

Conclusion. Though the facts of the *Ba* and *Sun* cases are different, the actions of the judges presiding over these asylum cases are remarkably similar. While the public rebuke of a judge, including the order by the *Ba* court that the case be remanded to another immigration judge, is atypical, IJ Chase's history in several cases suggests that these actions against him were a long time coming. And while the Second Circuit's discussion of IJ Ferris's conduct was limited to the *Sun* case, it seemed clear that the federal appeals court was not at all pleased with her demeanor.

Indeed, a judge's demeanor is not a trivial issue. Political scientist Lawrence Baum considers judicial demeanor to be among the most significant qualities of judges, along with competence, commitment, and impartiality. Baum contends: "Judges have enormous power over the lawyers and litigants who come before them, and they receive a great deal of deference. . . . Judges with a judicial temperament maintain their composure and refrain from misusing their power by bullying the people who come before them or acting arbitrarily" (2008:140). Simply put, judges with a foul demeanor are thought to be unfair, which no less questions their impartiality. Not limited to the behavior of the particular judges in question, however, the legitimacy of the broader judicial system is at stake when judges' impartiality is doubted. From this perspective, perhaps IJs Chase and Ferris got off relatively easy with mere public rebukes of their conduct by the Second Circuit. **jsj**

REFERENCES

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