

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5

(Argued: August 10, 2006) Decided: November 9, 2006)

Docket No. 05-1390-ag

MAHAMED AYENUL ISLAM,

*Petitioner,*

v.

ALBERTO R. GONZALES,

*Respondent.*

Before: B.D. PARKER, WESLEY, HALL, *Circuit Judges.*

Appeal from final judgment of the Board of Immigration Appeals affirming the denial of petition for asylum, withholding of removal, and relief under the Convention Against Torture.

VACATED and REMANDED.

GAIL Y. MITCHELL, Assistant United States Attorney, *for*  
Kathleen M. Mehltrittter, Acting United States  
Attorney for the Western District of New York,  
Buffalo, NY, *for Respondent*.

Petitioner Mahamed Ayenul Islam, a native and citizen of Bangladesh, seeks review of a February 14, 2005, order of the Board of Immigration Appeals (“BIA”) affirming the May 18, 1998, decision of Immigration Judge (“IJ”) Jeffrey S. Chase, which denied Islam’s application

1 for asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”)  
2 on the basis that Islam’s testimony and documents lacked credibility. *See In re Mahamed Ayenul*  
3 *Islam*, No. A 73 178 541 (B.I.A. Feb. 14, 2005), *aff’g* No. A 73 178 541 (Immig. Ct. N.Y. City  
4 May 18, 1998).

5 Where, as here, the BIA adopts and affirms the decision of the IJ, and supplements the  
6 IJ’s decision, we review the decision of the IJ as supplemented by the BIA. *See Yan Chen v.*  
7 *Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005). We review the factual findings of the BIA and IJ  
8 for substantial evidence. *See* 8 U.S.C. § 1252(b)(4)(B); *Zhou Yun Zhang v. INS*, 386 F.3d 66, 73  
9 (2d Cir. 2004). We review *de novo* the IJ’s determination of mixed questions of law and fact, as  
10 well as the IJ’s application of law to facts. *See Secaida-Rosales v. INS*, 331 F.3d 297, 307 (2d  
11 Cir. 2003).

## 12 **I. The Asylum Hearing**

13 During immigration proceedings, an IJ has the authority to “administer oaths, receive  
14 evidence, and interrogate, examine, and cross-examine the alien and any witnesses.” 8 U.S.C. §  
15 1229a(b)(1). Unlike an Article III judge, an IJ is not merely the fact finder and adjudicator, but  
16 also has an obligation to establish and develop the record. *See Qun Yang v. McElroy*, 277 F.3d  
17 158, 162 (2d Cir. 2002). At the same time, as a judicial officer, an immigration judge has a  
18 responsibility to function as a neutral, impartial arbiter and must be careful to refrain from  
19 assuming the role of advocate for either party. *See Qun Wang v. Attorney Gen. of the U.S.*, 423  
20 F.3d 260, 261 (3d Cir. 2005). During the course of developing a sound and useful record, an IJ  
21 must, when appropriate, question an applicant in order, for example, to probe inconsistencies and

1 develop the relevant facts. But it is precisely because of the IJ's responsibility to develop the  
2 record during asylum proceedings that the IJ must remain impartial. The IJ has an obligation to  
3 conduct hearings in an unbiased way so as to afford each petitioner a fair and full opportunity to  
4 have his case considered.

5 As an officer of the United States government, an IJ represents the government and  
6 exercises its authority ex officio. By his or her conduct, the IJ embodies the view that the  
7 government is deserving of that authority because, among other reasons, it treats all with respect.  
8 Overly aggressive, overtly hostile, or sarcastic questioning is not part of that process since it  
9 demeans the witness, demeans the government, and demeans the judicial system. Like any  
10 judge, an IJ must display the patience and dignity befitting a person privileged to exercise  
11 judicial authority. *Giday v. Gonzales*, 434 F.3d 543, 550 (7th Cir. 2006).

12 These rules hold true even when — especially when — a petitioner is mendacious, even  
13 blatantly so. In such circumstances, the judicial officer has a ready response that does not  
14 involve personally humiliating the petitioner and damaging the institution he serves. At the  
15 conclusion of an opinion describing what transpired and explaining how and why he or she  
16 reached her conclusion, the IJ need simply add: “petition denied.”

17 Though we are generally deferential in our review of IJ and BIA decisions, when an IJ's  
18 conduct results in the appearance of bias or hostility such that we cannot conduct a meaningful  
19 review of the decision below, we remand. *See, e.g., Guo-Le Huang v. Gonzales*, 453 F.3d 142,  
20 150 (2d Cir. 2006). In this case, IJ Chase's conduct during the hearing frustrates our review of  
21 the proceedings. During the course of Islam's hearing, IJ Chase repeatedly addressed him in an

1 argumentative, sarcastic, impolite, and overly hostile manner that went beyond fact-finding and  
2 questioning.<sup>1</sup> Even when, as here, an IJ firmly believes a petitioner is not truthful, repetitive  
3 verbally abusive comments and questions taint the proceedings, erode the appearance of fairness  
4 and call into question the results of the proceeding. Since the IJ repeatedly interrupted Islam  
5 when he spoke, did not always allow him to explain what he meant, and sparred and argued with  
6 him, we are concerned that IJ Chase's questioning of Islam created an atmosphere in which it  
7 might have been difficult for Islam to advocate fully on his own behalf.<sup>2</sup> Because IJ Chase's  
8 conduct of the hearing creates substantial uncertainty as to whether the record below was fairly  
9 and reliably developed, we remand for further proceedings before a different IJ. *See Guo-Le*  
10 *Huang*, 453 F.3d at 150-1.

## 11 **II. The BIA's Decision**

12 Under the Immigration and Nationality Act and its regulations, the BIA is responsible for  
13 "resolv[ing] the questions before it in a manner that is timely, impartial, and consistent with the  
14 Act and regulations. . . [and for] provid[ing] clear and uniform guidance to the Service, the  
15 immigration judges, and the general public on the proper interpretation and administration of the

---

1 <sup>1</sup> For example, when Islam told the judge that he received his father's death certificate by  
2 mail from his family, IJ Chase responded, "Well, sir, if you asked for a certificate saying that  
3 you're the president of Bangladesh, would they send you something?" To Islam's contention that  
4 he suffered political persecution in his home country of Bangladesh, IJ Chase responded by  
5 analogizing Islam's petition for asylum to a fictional petition that Terry Nichols, the Oklahoma  
6 City bomber, might file if he applied for asylum in Bangladesh and claimed that he was  
7 persecuted in America.

1 <sup>2</sup> Islam's lawyer told the judge at the end of the hearing, "I believe that... a hostile  
2 environment was created here today where by [sic] my client was intimidated and maybe  
3 prevented from fully testifying completely as to his . . . grounds for asylum."

1 Act.” 8 C.F.R. 1003.1(d)(1). Islam argued on appeal to the BIA that IJ Chase had created a  
2 hostile environment in the courtroom. Rather than providing any “clear and uniform guidance”  
3 on the appropriate treatment of litigants, the BIA’s one-page dismissal of Islam’s appeal fails to  
4 mention his objections to the troubling manner in which his hearing was conducted.

5 Unfortunately, this is not the first time that the courtroom conduct of IJ Chase has been  
6 later questioned by this Court. By our count, this is the seventh time that we have criticized IJ  
7 Chase’s conduct during hearings. Our recent opinion in *Guo-Le Huang v. Gonzales, supra*,  
8 described IJ Chase’s “apparent bias against [the applicant] and perhaps other Chinese asylum  
9 applicants,” 453 F.3d at 150, and five summary orders in our Circuit have expressed similar  
10 concerns about IJ Chase’s remarks and demeanor while conducting hearings.<sup>3</sup> Considering the  
11 prior instances that we have cited, we hope and expect that the BIA has by this time dealt with IJ

---

1 <sup>3</sup>See *Ti Wu Gao v. Gonzales*, No. 05-0012-ag, 2006 WL 2853009, at \*3 (2d Cir. Sept. 29,  
2 2006) (unpublished summary order) (“In addition to the legal errors permeating the adverse  
3 credibility determination, the proceedings below were marred by IJ Chase’s behavior, which  
4 raises substantial questions as to his possible bias towards Chinese petitioners.”); *Jin Yong Chen*  
5 *v. Gonzales*, USCA No. 04-5826, at 5 (2d Cir. April 28, 2006) (unpublished summary order)  
6 (“Although this Court is denying the petitions for review, we are concerned by some of the  
7 remarks made by the IJ in his oral decision and after issuance of his oral decision. . . . [W]e note  
8 that IJ Chase’s gratuitous remarks about a petitioner’s personal conduct, unrelated to the  
9 application at issue, are not appropriately made by a judge.”); *Hajderasi v. Gonzales*, 166 Fed.  
10 Appx. 580, 582 (2d Cir. Feb. 13, 2006) (unpublished summary order) (“We are troubled  
11 nonetheless by his sarcastic tone and by [IJ Chase’s] manner of questioning, which is easily  
12 perceived as badgering. Such behavior by a judge is rarely appropriate.”); *Meizi Liu v. BIA*, 167  
13 Fed. Appx. 871, 873 (2d Cir. Feb. 17, 2006) (unpublished summary order) (“Furthermore, the  
14 Court finds the IJ’s conduct toward the petitioner particularly disturbing in this case. Remand is  
15 also proper, therefore, because the record supports [petitioner’s] argument that the Immigration  
16 Judge demonstrated a ‘pervasive bias and hostility’ towards [petitioner], which may have tainted  
17 his decision and prejudiced her claim.”); *You-Mei Ding v. CIS*, 140 Fed. Appx. 306 (2d Cir. Aug  
18 8, 2005) (unpublished summary order).

1 Chase's inappropriate behavior. Any failure on its part in this regard would not befit a board  
2 charged with stewardship over the conduct of judicial proceedings.

3 **CONCLUSION**

4 For the forgoing reasons, Islam's petition for review is GRANTED, the decisions of the  
5 BIA and IJ are VACATED, and the case is REMANDED for further proceedings before an  
6 immigration judge other than IJ Chase. Any pending motion for a stay of removal is DENIED as  
7 moot.