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Court Urges Review of New York Judge's Immigration Cases That Are on Appeal

By RAY RIVERA

In a move that immigration lawyers say is highly unusual, a federal appeals court has recommended that a Justice Department appeals board review all immigration cases still on appeal involving a judge who has been criticized as being hostile to people seeking asylum.

The request came in a ruling on Wednesday by the United States Court of Appeals for the Second Circuit in Manhattan that struck down a decision by Judge Jeffrey S. Chase in the case of a Mauritania native who said he would be persecuted if he was returned to his home country.

The court said Judge Chase's decision to deny asylum contained a "plethora of errors and omissions." The three-judge panel capped off its ruling by saying that "given the court's history with Chase, it may improve judicial efficiency" if the Board of Immigration Appeals "closely re-examined all of his cases" that are still on appeal.

The board is the first level of appeal in immigration cases before they can advance to the federal appellate courts. A phone call to the board's offices in Falls Church, Va., last night was not returned.

Immigration experts say the court's rebuke of Judge Chase highlights the escalating demands on the nation's 218 or so immigration judges, who handle some 350,000 cases a year without the help of law clerks, bailiffs or stenographers. A scarcity of competent immigration lawyers and language barriers only complicate matters.

As further evidence of the pressure, the appeals court issued a temporary notice on Friday that asylum cases would no longer be scheduled for oral arguments unless requested by the parties involved and approved by the court. The court's immigration caseload has expanded in recent years as the Justice Department has curtailed its own appeals process. The court will take public comments before deciding whether to make the change permanent.

"Can you imagine if they said there were no longer going to be oral arguments in criminal cases, civil libertarians would go crazy," said Bryan Lonegan, a lawyer with the Legal Aid Society's immigration unit. "But they're doing this in these asylum cases because the workload is huge."

Lawyers who have worked with Judge Chase say his experience serves almost as a cautionary tale. Before his 1995 appointment, he was chairman of the American Immigration Lawyers Association's National Asylum Reform Task Force. He received awards as a human rights advocate and rallied on behalf of people from China seeking asylum. He even videotaped lessons on asylum for other lawyers.

But in recent years, the Second Circuit has criticized his demeanor in court. Regarding a 1998 hearing involving a man seeking asylum from Bangladesh, the court said, Judge Chase “repeatedly addressed him in an argumentative, sarcastic, impolite and overly hostile manner.”

After a stinging Second Circuit decision was published last year in *The New York Law Journal*, an immigration lawyer described the judge as devastated. “He said, ‘I learned my lesson, but some of these cases are still in the pipeline,’ ” the lawyer, Robert Murtha, told *The New York Times* last fall.

One of those cases involved Aboubacar Ba, the Mauritania native. After a 2004 hearing, Judge Chase denied Mr. Ba asylum in part because the judge said Mr. Ba failed to apply for asylum within one year of arriving in the United States; his immigration papers showed otherwise.

The appeals court sent the case back to the appeals board, adding: “We note with concern that, based on the transcript, the tone of this proceeding is consistent with previous proceedings that have drawn rebuke from this court.”

The panel also pointed to a “disturbing” incident in which the judge appeared to tread on lawyer-client privilege when he asked Mr. Ba if he lied to his attorney: “Yes or no?”

“It is inconceivable,” the panel wrote, that Judge Chase, “as a judge and lawyer, would not know the impropriety of that question.”

Calls to Judge Chase’s home were not returned yesterday; Justice Department rules forbid immigration judges from talking to reporters.

Mr. Chase is one of several immigration judges who have been criticized by the appeals courts in recent years. The nation’s immigration judges are employees of the Justice Department, not the court system.

In fact, Judge Chase has a record of approving asylum requests more often than the average judge. He denied 58 percent of asylum claims, compared with about 62 percent by immigration judges nationally, from 2000 to early 2005, according to the latest data available from Transactional Records Access Clearinghouse at Syracuse University.

Lauris Wren, who runs an asylum clinic at Hofstra University’s School of Law, said the court was “scapegoating Judge Chase instead of addressing” systemwide problems.

Mr. Ba’s lawyer, Thomas V. Massucci, told *The Associated Press* that he had never heard of a court making such a recommendation. “There are probably hundreds of these cases in the pipeline,” he said.

Mr. Lonegan called the court’s recommendation “extraordinary.”

“I just did an asylum case in front of him maybe six months ago, and he was extremely pleasant,” Mr. Lonegan said, adding that the judge allowed his client to tell his story of persecution for 40 minutes. “I just thought that was terribly decent of him,” Mr. Lonegan said.

Nina Bernstein contributed reporting.