

UNITED STATES MARSHALS SERVICE

AFFIDAVIT

STATE OF VIRGINIA

CITY OF Fairfax

I, Thomas Fong, make the following statement freely and voluntarily without promise or coercion to Patrick Anderson, who has been identified to me as an Equal Employment Opportunity (EEO) Investigator, United States Marshals Service, knowing that this statement may be used in evidence. I understand that the information is given without a pledge of confidentiality and that it may be shown to parties with a need to know. The following statement is made in response to the EEO Complaint of Discrimination filed by A. Ashley Tabaddor against the U.S. Department of Justice, Executive Office for Immigration Review (EOIR) on November 29, 2012.

I have been advised that the claim accepted for investigation is as follows:

Judge Tabaddor alleges that EOIR discriminated against her on the basis of national origin, religion, race, and reprisal related to the issuing of an ethics opinion to recuse herself from immigration cases involving Iranians. Judge Tabaddor further alleges that EOIR has retaliated against her for claiming that ethics opinion is discriminatory.

I hereby solemnly swear or affirm:

National Origin

National Origin Discrimination The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

QUESTION #1: For the record, what is your full name and job title?

ANSWER: Thomas Y. K. Fong, Asst. Chief Immigration Judge (ACIJ).

QUESTION #2: Where were you employed at the time the complaint was filed? Please provide the name of the agency, division, and location. How long have you worked in your current position? How long have you worked for the agency?

ANSWER: The Los Angeles Immigration Court, U.S. Department of Justice (USDOJ), Executive Office for Immigration Review (EOIR) with a duty station at the Los Angeles Immigration Court, 606 S. Olive Street, 15th Floor, L.A., CA 90014. I have been an ACIJ since October 2, 2006. I joined the EOIR when I was appointed an Immigration Judge (IJ) on October 28, 1984.

QUESTION #3: Who were your 1st and 2nd level supervisors? Please provide their names and job titles.

ANSWER: My 1st level supervisor is Deputy Chief Immigration Judge (DCIJ) Michael McGoings and my 2nd level supervisor is Chief Immigration Judge (CIJ) Brian O'Leary.

QUESTION #4: What is your National Origin?

ANSWER: Asian/Pacific Islander (Chinese & Polynesian Hawaiian).

QUESTION #5: To your knowledge, what is Judge Tabaddor's National Origin? When and how did you become aware of her National Origin?

ANSWER: I believe she is Persian American. I do not recall specifically when or how I learned this.

QUESTION #6: To your knowledge, have other EOIR staff members been required to recuse themselves from cases involving members of their prospective National Origin? If so, who are they and what was their National Origin? When did this action take place?

ANSWER: No, I only have knowledge of her situation.

On July 5, 2012, Judge Tabaddor received an email from Mr. Jeff Rosenblum, recommending that she disqualify herself from matters involving individuals from Iran due to her activity in the Iranian American community.

QUESTION #7: Has Judge Tabaddor spoken to you about the contents of this email? If so, why was this request made? Did you agree with the request?

ANSWER: Yes. She asked for clarification of an apparent email from Mr. Jeff Rosenblum at OGC's Ethics Office. Yes, I met with her on October 1, 2012 as she requested.

QUESTION #8: What advice or directive did you provide to Judge Tabaddor with regards to the content of the email? Please provide specifics.

ANSWER: I stated that I had read the email correspondence between Mr. Rosenblum and her as I was cc'd by both of them on this issue. I told her it was my understanding from reading Mr. Rosenblum's emails that she must recuse herself.

QUESTION #9: Have you discussed or sought advice from anyone else in the EOIR with regards to the recusal request? If so, who did you speak with? What advice or guidance did you receive?

ANSWER: No.

On August 28, 2012, in response to Judge Tabaddor's request for clarification, she alleges that the Mr. Rosenblum's recusal request was changed, and he mandated that she recuse herself from all cases involving respondents from Iran.

QUESTION #10: Has Judge Tabaddor spoken to you about the mandate received from Mr. Rosenblum? If so, did you agree with the mandate from Mr. Rosenblum?

ANSWER: As stated in my responses to Questions #7 and #8, I told her it was my understanding from reading Mr. Rosenblum's emails that she must recuse herself.

QUESTION #11: What advice or directive did you provide to Judge Tabaddor with regards to the mandate from Mr. Rosenblum? Please provide specifics.

ANSWER: Same answer as given to Questions #8 and #10.

QUESTION #12: Have you discussed or sought advice from anyone else in the EOIR with regards to the recusal request? If so, who did you speak with? What advice or guidance did you receive?

ANSWER: No.

QUESTION #13: Has any other employee under your supervision been mandated to recuse themselves from cases because of their personnel affiliations as Judge Tabaddor was? If so, please provide their name, affiliation and the person responsible for the mandate.

ANSWER: I am not aware of other IJ's being recused from matters as a result of an ethics opinion from the Office of General Counsel. However, I have on occasion had IJs come to me, or recusal motions that were referred to me as an ACIJ, for which I recommended, concurred or directed that the IJs recuse themselves from a specific case. Recusal from a matter would be based upon an actual or apparent conflict of interest. Although I do not recall the specific cases, as I do not keep record of them, I do recall the following IJs having recused themselves from matters after discussing it with me: IJs Joyce Bakke, Monica Little, Tara Naselow, David Neumeister, Rachel Ruane, Rodin Rooyani, Christine Stancill and even myself. Other IJs, including those who have since retired or transferred to other courts, may also have done so.

QUESTION #14: Prior to these events, have you had any conversations with Judge Tabaddor about her social or political affiliations and there possible effect on her position as an Immigration Judge? If so, when did you speak with her?

ANSWER: No.

QUESTION #15: To your Knowledge, how many personal speaking engagements have Judge Tabaddor requested prior the mandate from Mr. Rosenblum? Of those, how many did you approve?

ANSWER: She has requested many personal speaking engagements more than any other IJ that I supervise, but I do not keep record or count of them although OGC Ethics may do so. To my recollection I have approved all of her requests and cannot recall ever disapproving one.

QUESTION #16: After receiving the mandate from Mr. Rosenblum, how many times has Judge Tabaddor requested to use her official title on person speaking engagements? Of those, how many have you denied?

ANSWER: I do not recall how many times she has requested to use her official title. I do not recall how many have been granted or denied upon recommendation of OGC/Ethics.

Judge Tabaddor alleges that on September 7, 2012, Mr. Rosenblum confirmed the recusal order was the official position of the Office of General Counsel (OGC), and that the order was not reviewable by any other entity.

QUESTION #17: Was the aforementioned statement by Judge Tabaddor brought to your attention? If so, what was your response? To your knowledge, what OGC member was Mr. Rosenblum referring to in this conversation?

ANSWER: Yes, by email being cc'd to me. I gave no response as it was not directed to me.

I do not know what "conversation" this question is referring to but believe it was an email response to IJ Tabaddor's seeking clarification of his earlier email.

QUESTION #18: To your knowledge, does OGC have the final say on matters of this nature or are they reviewable by the EOIR Director?

ANSWER: I have no knowledge of whether OGC has the final say on matters of this nature or if they are reviewable by the EOIR Director.

QUESTION #19: Based upon the recusal order, to your knowledge, how many of Judge Tabaddor's cases were reassigned to other judges? Did Judge Tabaddor object to the cases being reassigned?

ANSWER: I do not know how many cases that were reassigned by IJ Tabaddor due this matter. Yes, she did object to them being reassigned when we held the discussion on October 1, 2012.

QUESTION #20: Prior to these events, have you had any conversations with Judge Tabaddor about her social or political affiliations and there possible effect on her position as an Immigration Judge?

ANSWER: No.

QUESTION #21: To your knowledge, has Judge Tabaddor's work or personal association with members of the Iranian American community negatively affected her professional standing with the Agency? If so, please explain how?

ANSWER: Not to my knowledge.

QUESTION #22: Do you have any documentation support the decision to have Judge Tabaddor recused from cases involving Iranian American citizens? If so, please provide a copy for the record?

ANSWER: With regard to the opinion from the Office of General Counsel that recusal was appropriate, I understand those emails are being provided to you by that office. My emails with IJ Tabaddor regarding recusal are attached.

QUESTION #23: Are you aware of the agency's anti-discrimination policy? Was Judge Tabaddor ordered to recuse herself from cases involving Iranian Americans based solely on her National Origin (Iranian)? If not, why was she asked to recuse herself?

ANSWER: Yes. The official opinion from the OGC is what I understand was the basis for the recusals.

QUESTION #24: In the past 2 years, how many requests for personal speaking engagements has Judge Tabaddor been allowed to use her official title? To your knowledge, how many times has Judge Tabaddor been informed that she could not use her official title during these engagements?

ANSWER: The answers to both questions in #24 are: I do not recall nor do I keep record of them.

QUESTION #25: Was Judge Tabaddor's requests to use her official title denied based on her National Origin (Iranian American)?

ANSWER: No, I understand that they were based upon the general guidelines set forth by OGC on when an official title can and cannot be used.

Race:

Race discrimination involves treating someone (an applicant or employee) unfavorably because he/she is of a certain race or because of personal characteristics associated with race (such as hair texture, skin color, or certain facial features). Color discrimination involves treating someone unfavorably because of skin color complexion.

QUESTION #26: What is your race?

ANSWER: Chinese and Polynesian Hawaiian.

QUESTION #27: To your knowledge, what is Judge Tabaddor's race? When and how did you become aware of her race?

ANSWER: I believe she is Persian American.

QUESTION #28: Have other staff members been required to recuse themselves from cases involving members of their prospective race? If so, who are they and what is their race? When did this action take place?

ANSWER: Not to my knowledge.

QUESTION #29: Was Judge Tabaddor ordered to recuse herself from cases involving Iranian Americans based solely on her race (Iranian American)?

ANSWER: No.

Religion

Religious discrimination involves treating a person (an applicant or employee) unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs

QUESTION #30: For the record, what is your religion?

ANSWER: I belong to the Church of Jesus Christ of Latter-day Saints (Mormons).

QUESTION #31: To your knowledge, what is Judge Tabaddor's religion?

ANSWER: I am not sure, but believe she is a member of the religion of Islam (Moslem).

QUESTION #32: At the time of the alleged discriminatory event, which is the foundation of this complaint, were you aware of Judge Tabaddor's religious beliefs?

ANSWER: I am not sure, but believe she is a Moslem.

QUESTION #33: Did Judge Tabaddor's religious belief factor into any decisions or recommendations made by you with regard to her personal appearance requests?

ANSWER: None at all. They were based strictly upon the advisal given by OGC.

Reprisal

Reprisal discrimination makes it illegal to fire, demote, harass, or otherwise "retaliate" against people (applicants or employees) because they filed a charge of discrimination, because they complained to their employer or other covered entity about discrimination on the job, or because they participated in an employment discrimination proceeding (such as an investigation or lawsuit).

QUESTION #34: For the record, do you have any prior EEO activity or have you express concerns to management regarding personnel policies of procedures?

ANSWER: When I was with the legacy INS as a government Trial Attorney I was designated the Western Regional trial attorney representing the INS in EEO complaints

and other personnel actions before the EEO and MSPB adjudicators for a number of years in the late 1970's and early 1980's.

QUESTION #35: To your knowledge, did Judge Tabaddor express opposition to the recusal order she received? Were any actions taken against Judge Tabaddor, by you, based upon her opposition to the recusal order?

ANSWER: Yes, she expressed opposition. I took no actions against IJ Tabaddor and only stated that we had been given official guidance from OGC that we should follow.

QUESTION #36: Also, did Judge Tabaddor's opposition to the recusal factor into any decisions or recommendations made by you with regards to her personal appearance requests?

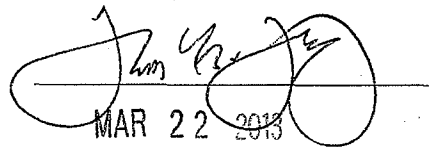
ANSWER: No.

QUESTION #37: Do you have anything else to add?

ANSWER: No.

OATH

I have read the above statement consisting of 10 pages, including this page. I declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that my statement is true, correct, and complete to the best of my knowledge, information and belief. I understand that the information I have given is not to be considered confidential and that it may be shown to individuals with a right to know.



MAR 22 2013

(Affiant's Signature and date)

Thomas Y.K. Fong
Assistant Chief Immigration Judge



Signed before witness

ON THIS ____ DAY OF MAR 22 2013, 2013

UNITED STATES MARSHALS SERVICE

SUPPLEMENTAL AFFIDAVIT

STATE OF CALIFORNIA

CITY OF Los Angeles

I, Thomas Fong, make the following statement freely and voluntarily without promise or coercion to Patrick Anderson, who has been identified to me as an Equal Employment Opportunity (EEO) Investigator, United States Marshals Service, knowing that this statement may be used in evidence. I understand that the information is given without a pledge of confidentiality and that it may be shown to parties with a need to know. The following statement is made in response to the EEO Complaint of Discrimination filed by A. Ashley Tabaddor against the U.S. Department of Justice, Executive Office for Immigration Review (EOIR) on November 29, 2012.

I have been advised that the claim accepted for investigation is as follows:

Judge Tabaddor alleges that EOIR discriminated against her on the basis of national origin, religion, race, and reprisal related to the issuing of an ethics opinion to recuse herself from immigration cases involving Iranians. Judge Tabaddor further alleges that EOIR has retaliated against her for claiming that ethics opinion is discriminatory.

I hereby solemnly swear or affirm:

This is a supplement inquiry based on the need for clarification to responses received to the original affidavit submitted by you on March 22, 2013.

Question: Did you concur with the Mr. Rosenblum's recommendation on July 5, 2012, that Judge Tabaddor should recuse herself from cases involving Iranian Nationals?

ANSWER: I agreed upon reading the explanations and quoted portions of Mr. Rosenblum's initial response of July 5, 2012 and his clarification response of August 28, 2012, wherein he cited that IJ Tabaddor should disqualify herself from certain cases based on "5 CFR 2635.502(a) that an employee should not participate in any matter in which circumstances would cause a reasonable person with knowledge of the relevant facts might question [her] impartiality in the matter."

Question: As supervisor, did you have any say in whether the recusal order was implemented?

ANSWER: I understood from Mr. Rosenblum's September 7, 2012 response to IJ Tabaddor's request for further clarification of his August 28, 2012 email only reiterated that she recuse herself.

Question: In question #8 of the original affidavit, you stated it was your understanding from reading Mr. Rosenblum's email that Judge Tabaddor **must** recuse herself. Based on the statement, did you perceive Mr. Rosenblum's request as an order or a recommendation from OGC?

ANSWER: I perceived that Mr. Rosenblum's July 5, August 28 and September 7, 2012 emails and responses for clarification required IJ Tabaddor to recuse herself.

Question: If you perceived Mr. Rosenblum's request as a recommendation, why was the request implemented as an order?

ANSWER: I did not perceive his request as a recommendation, but as an order.

Question: In question #13 of the original affidavit, you provided names of employees who have recused themselves from cases. For each employee named:

1. What is their National Origin?

ANSWER: To be appointed as an Immigration Judge a person must be a United States citizen by birth, acquisition, derivation or naturalization. Thus, I assume they are all United States citizens. I do not know how they individually identify their own National Origins.

2. What is their Race?

ANSWER: I know from conversations with some of them.

IJs Bakke, Naselow and Stancill – I do not know. IJ Little – African American.

IJs Neumeister & Ruane – Jewish American. IJ Rooyani – Persian American.

3. What is their religious preference?

ANSWER: I know from conversations with some of them. IJs Bakke, Little,

Naselow, Rooyani and Stancill – I do not know. IJs Neumeister and Ruane –

Jewish.

4. Who made the decision that they must recuse themselves for the cases?

ANSWER: In most instances they ultimately made the final decision themselves regardless of any concurrence or recommendation on my part. In some instances they recused themselves and in other cases they did not.

5. Were they order by OGC to recuse themselves based on their perceived political activity?

ANSWER: None to my recollection.

6. What role did you play in the decision for them to recuse themselves from cases?

ANSWER: I gave them my recommendation or opinions when asked by an IJ or when a complaint or motion to recuse was filed by a party.

Question: You stated that Judge Tabaddor's personal or political affiliations did not affect her professional standing with EOIR, so why did you concur with the recusal order she received?

ANSWER: The perception (not just a reality) of possible lack of impartiality that could be held or viewed by the public and parties before the court is part and parcel of the various codes of professional conduct all attorneys and judges are held with 5 CFR 2635.502(a) as one which was specifically cited in Mr. Rosenblum's various emails with IJ Tabaddor.

Question: To your knowledge, who makes the case assignments for your section?

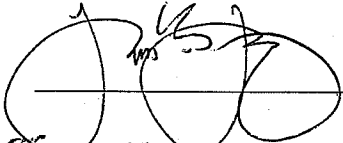
ANSWER: They are assigned randomly by DHS or by the Court Administrator (CA) or his designate as cases are docketed or filed with the court.

Question: Is Judge Tabaddor currently subjected to the recusal order as she alleges?

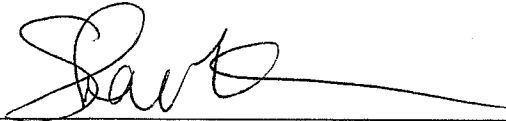
ANSWER: Yes.

OATH

I have read the above statement consisting of 4 pages, including this page. I declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that my statement is true, correct, and complete to the best of my knowledge, information and belief. I understand that the information I have given is not to be considered confidential and that it may be shown to individuals with a right to know.



Thomas J. K. Fong
(Affiant's Signature and date)
Assistant Chief Immigration Judge



Signed before witness

ON THIS ____ DAY OF MAR 28 2013

Fong, Thomas (EOIR)

From: Tabaddor, A. Ashley (EOIR)
Sent: Tuesday, September 11, 2012 8:31 AM
To: Fong, Thomas (EOIR)
Subject: RE: Recusal

Sounds great. Thank you for the quick reply.

From: Fong, Thomas (EOIR)
Sent: Monday, September 10, 2012 7:27 PM
To: Tabaddor, A. Ashley (EOIR); Fong, Thomas (EOIR)
Subject: Re: Recusal

Yes Ashley, this is OGC's conclusion. When I get back to LOS next week, let us sit down and see how we will do this. Tom

From: Tabaddor, A. Ashley (EOIR)
Sent: Monday, September 10, 2012 03:35 PM
To: Fong, Thomas (EOIR)
Cc: Tabaddor, A. Ashley (EOIR)
Subject: Recusal

Dear Judge Fong,

I hope you are well. I am writing to follow up on the email discussions below. From my reading of Mr. Rosenblum's emails, I understand that I have been instructed by OGC and yourself to recuse myself from all cases that involve an Iranian national. While I disagree with the characterization of the facts and the conclusion of the EOIR OGC, I understand that this is the order and I am prepared to follow it. To that end, I am seeking instructions on how you would like me to proceed next.

Based on my review of the docket, I have seven (7) pending cases that involve an Iranian national as a respondent. From those seven, three (3) are new cases, *i.e.* the initial master calendar hearings are in the future. There are two (2) that are set to be heard on the merits; *i.e.* pleadings have been taken and the next hearing is to hear any application for relief. The remaining two (2) are in the midst of either a merits hearing or contested pleadings. For example, one is an adjustment of status matter where the next hearing is to continue with additional testimony. Extensive filings and testimony have been taken in that case. The other is in the midst of a contested pleading where some initial filings and briefings have been conducted.

My understanding is that for any recusal from a case there needs to be a written decision by the IJ, specific to the case, that is served on the parties and made part of the record. The OPPM does not seem to contemplate how to handle this type of recusal that was not initiated by the parties or the IJ. Thus, I'm not sure how you would want me to proceed.

Finally, in terms of time frame, the next hearing where an Iranian national is schedule before me is on October 14, 2012. Thus, any guidance before that time would be greatly appreciated.

Thank you,
Ashley Tabaddor

From: Rosenblum, Jeff (EOIR)
Sent: Friday, September 07, 2012 10:15 AM
To: Tabaddor, A. Ashley (EOIR)
Cc: Fong, Thomas (EOIR); Billingsley, Kelly (EOIR)
Subject: RE: Seeking Clarification

Judge Tabaddor,

This is the official opinion of the Office of the General Counsel (OGC), and it is not "reviewable" by another entity. Moreover, PRAO offers guidance on the professional rules of conduct, not the Standards of Ethical Conduct for Employees of the Executive Branch (i.e., 5 C.F.R. Part 2635).

Nonetheless, based on your inquiry, I consulted with the Departmental Ethics Office (DEO) concerning this issue. DEO confirmed OGC's opinion. Thanks.

Jeff

From: Tabaddor, A. Ashley (EOIR)
Sent: Wednesday, September 05, 2012 2:47 PM
To: Rosenblum, Jeff (EOIR)
Cc: Fong, Thomas (EOIR); Billingsley, Kelly (EOIR); Tabaddor, A. Ashley (EOIR)
Subject: RE: Seeking Clarification

Hi Jeff,

I hope you are well. I have read your email below and wanted to seek further point of clarification. In your email you mention that this is the opinion of OGC. Is it correct to assume that this is the official opinion of EOIR OGC or were others involved in reaching this conclusion? For example, was PRAO consulted regarding this issue? If not, can we please forward this matter for them to consider as well?

Thank you,
Ashley Tabaddor

From: Rosenblum, Jeff (EOIR)
Sent: Tuesday, August 28, 2012 5:16 AM
To: Tabaddor, A. Ashley (EOIR)
Cc: Fong, Thomas (EOIR); Billingsley, Kelly (EOIR)
Subject: RE: Seeking Clarification

Judge Tabaddor,

As mentioned in my July 5, 2012 e-mail, under the standards set forth in 5 C.F.R. § 2635.502(a), an employee should disqualify herself from matters in which "circumstances would cause a reasonable person with knowledge of the relevant facts to question [her] impartiality in the matter."

You are a prominent advocate for the Iranian-American community, and your activities are well-documented in the public domain, including but not limited to the internet. You engage in advocacy at such a high level that you were invited by the White House Office of Public Engagement to speak on behalf of the Iranian-American community, and your speeches, presentations, and advocacy are widely available. Based on this involvement, it remains the opinion of the Office of the General Counsel (OGC) that under the standards set forth in section 502, you should disqualify yourself from matters involving respondents from Iran.

The fact that you are active in other areas, or that other Immigration Judges (IJs) have issues that might cause appearance problems, are all to be considered on a case-by-case basis. OGC has formally recommended that other IJs disqualify themselves from a particular class of matters in similar circumstances.

Moreover, the fact that "[e]very single one of [your] activities has been vetted through the ACIJ/ethics process" makes this issue no less of an appearance problem. If participation in these activities would cause large-scale recusals, they

would not receive ethics approval. See 5 C.F.R. § 2635.802(b) (prohibiting an employee from engaging in outside activities "[i]f, under the standards set forth in §§ 2635.402 and 2635.502, it would require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired."). To the contrary, we have been assured by ACIJ Fong that cases affected by this determination will represent a small fraction of cases heard in the Los Angeles Immigration Court (LAIC). Moreover, based on the size of the LAIC (*i.e.*, approximately 30 IJs), it will not be difficult to reassign such cases. Further, ACIJ Fong as assured us that any such matters from which you are recused will be replaced by other cases to ensure a fair distribution of work among all of the IJs in the LAIC, and so that there will be no reduction in your overall caseload.

In other words, subject to the standards set forth above and supervisory approval, you may generally choose what outside activities you participate in. However, those choices may have consequences, such as your ability to participate in particular matters officially. See, *e.g.*, 5 C.F.R. § 2635.502(b)(1)(v) (requiring employees to disqualify themselves from matters involving organizations in which they are active participants).

Please note that in no way is OGC suggesting that you have an actual bias. Rather, based on the circumstances as described, and utilizing the relevant standards, OGC has determined that you should disqualify yourself from cases involving respondents from Iran to avoid any appearance problems, as suggested in my earlier e-mail.

Feel free to contact me if you have any questions. Thanks.

Jeff

Jeff Rosenblum
Executive Office for Immigration Review
Office of the General Counsel
(703) 305-0799

From: Tabaddor, A. Ashley (EOIR)
Sent: Monday, August 20, 2012 2:08 PM
To: Rosenblum, Jeff (EOIR)
Cc: Tabaddor, A. Ashley (EOIR)
Subject: Seeking Clarification

Dear Jeff,

I hope you are doing well. I am writing to seek clarification on a comment you made in an email correspondence to me, dated July 5, 2012. In the comment, you stated:

"Finally, your request to participate in this roundtable has raised a separate ethics concern. Based on your representation that you are very active in the Iranian-American community, as well as your participation in this event, we recommend that you disqualify yourself from any matter involving individuals from Iran that comes before you in your capacity as an Immigration Judge. Pursuant to 5 C.F.R. § 2635.502(a), an employee should not participate in a matter in which "circumstances would cause a reasonable person with knowledge of the relevant facts to question [her] impartiality in the matter."

From this email, I am not certain if I am supposed to recuse myself from all cases cited above, and if so why. I am confused as to why my activities in the Iranian-American community would create an appearance of conflict of interest warranting recusal from all cases that involve an Iranian national as a respondent. My activities are not limited to the Iranian-American community. I am active in the legal community and in the academic community. I am also an active member of the Pacific Council on International Policy. Every single one of my activities has been vetted through the ACIJ/ethics process, and much of the topics and the messages that I share in my activities cross between the various

groups. Thus, the level or the nature of my activities in these communities should not be a surprise to anyone at EOIR ethics office. But most importantly, what bias are we trying to avoid the appearance of? Is it because I am an Iranian-American? Would this same standard apply to an IJ who is openly gay/lesbian and hears claims of asylum based on sexual orientation? What about the IJ who is very active in his church? Should he recuse himself from all asylum claims based on persecution of Christians?

I am not trying to be difficult, but this "recommendation" deeply concerns me. If the ethics office is indeed instructing me to disqualify myself from the cases outlined above, I would request a fully analyzed opinion on the issue along with specific instructions. Otherwise, I would ask that the ethics office reconsider the "recommendation" and clarify the record on this matter.

Thank you so much for your help,
Ashley Tabaddor

Fong, Thomas (EOIR)

From: Fong, Thomas (EOIR)
Sent: Monday, October 01, 2012 10:37 AM
To: Tabaddor, A. Ashley (EOIR)
Subject: RE: Recusal

Tracking:	Recipient	Delivery	Read
	Tabaddor, A. Ashley (EOIR)	Delivered: 10/1/2012 10:37 AM	Read: 10/1/2012 11:55 AM

Yes come on down then

Thomas Y.K. Fong
Assistant Chief Immigration Judge
Immigration Court/EOIR/DOJ
606 South Olive Street, 15th Floor
Los Angeles, CA 90014
(213)894-2811
thomas.fong@usdoj.gov

From: Tabaddor, A. Ashley (EOIR)
Sent: Monday, October 01, 2012 10:23 AM
To: Fong, Thomas (EOIR)
Subject: RE: Recusal

Hi Tom,
If it's o.k. I'll drop by after my morning case. It should be around noon. Are you available then?
Thanks,
Ashley

From: Fong, Thomas (EOIR)
Sent: Monday, October 01, 2012 9:56 AM
To: Tabaddor, A. Ashley (EOIR)
Subject: RE: Recusal

Ashley come see me when you have a chance this morning as I will be in court all afternoon. Or if you do not find spare time this morning come see me tomorrow. Tom

Thomas Y.K. Fong
Assistant Chief Immigration Judge
Immigration Court/EOIR/DOJ
606 South Olive Street, 15th Floor
Los Angeles, CA 90014
(213)894-2811
thomas.fong@usdoj.gov

From: Tabaddor, A. Ashley (EOIR)
Sent: Monday, October 01, 2012 8:41 AM
To: Fong, Thomas (EOIR)
Cc: Tabaddor, A. Ashley (EOIR)
Subject: FW: Recusal

Good morning Tom,
I hope you had a nice weekend. I was just checking in with you regarding this matter since the first case that is impacted by this order is scheduled for October 4th.
Thanks,

Ashley

From: Fong, Thomas (EOIR)
Sent: Monday, September 10, 2012 7:27 PM
To: Tabaddor, A. Ashley (EOIR); Fong, Thomas (EOIR)
Subject: Re: Recusal

Yes Ashley, this is OGC's conclusion. When I get back to LOS next week, let us sit down and see how we will do this. Tom

From: Tabaddor, A. Ashley (EOIR)
Sent: Monday, September 10, 2012 03:35 PM
To: Fong, Thomas (EOIR)
Cc: Tabaddor, A. Ashley (EOIR)
Subject: Recusal

Dear Judge Fong,

I hope you are well. I am writing to follow up on the email discussions below. From my reading of Mr. Rosenblum's emails, I understand that I have been instructed by OGC and yourself to recuse myself from all cases that involve an Iranian national. While I disagree with the characterization of the facts and the conclusion of the EOIR OGC, I understand that this is the order and I am prepared to follow it. To that end, I am seeking instructions on how you would like me to proceed next.

Based on my review of the docket, I have seven (7) pending cases that involve an Iranian national as a respondent. From those seven, three (3) are new cases, *i.e.* the initial master calendar hearings are in the future. There are two (2) that are set to be heard on the merits; i.e. pleadings have been taken and the next hearing is to hear any application for relief. The remaining two (2) are in the midst of either a merits hearing or contested pleadings. For example, one is an adjustment of status matter where the next hearing is to continue with additional testimony. Extensive filings and testimony have been taken in that case. The other is in the midst of a contested pleading where some initial filings and briefings have been conducted.

My understanding is that for any recusal from a case there needs to be a written decision by the IJ, specific to the case, that is served on the parties and made part of the record. The OPPM does not seem to contemplate how to handle this type of recusal that was not initiated by the parties or the IJ. Thus, I'm not sure how you would want me to proceed.

Finally, in terms of time frame, the next hearing where an Iranian national is schedule before me is on October 14, 2012. Thus, any guidance before that time would be greatly appreciated.

Thank you,
Ashley Tabaddor

From: Rosenblum, Jeff (EOIR)
Sent: Friday, September 07, 2012 10:15 AM
To: Tabaddor, A. Ashley (EOIR)
Cc: Fong, Thomas (EOIR); Billingsley, Kelly (EOIR)
Subject: RE: Seeking Clarification

Judge Tabaddor,

This is the official opinion of the Office of the General Counsel (OGC), and it is not "reviewable" by another entity. Moreover, PRAO offers guidance on the professional rules of conduct, not the Standards of Ethical Conduct for Employees of the Executive Branch (*i.e.*, 5 C.F.R. Part 2635).

Nonetheless, based on your inquiry, I consulted with the Departmental Ethics Office (DEO) concerning this issue. DEO confirmed OGC's opinion. Thanks.

Jeff

From: Tabaddor, A. Ashley (EOIR)
Sent: Wednesday, September 05, 2012 2:47 PM
To: Rosenblum, Jeff (EOIR)
Cc: Fong, Thomas (EOIR); Billingsley, Kelly (EOIR); Tabaddor, A. Ashley (EOIR)
Subject: RE: Seeking Clarification

Hi Jeff,

I hope you are well. I have read your email below and wanted to seek further point of clarification. In your email you mention that this is the opinion of OGC. Is it correct to assume that this is the official opinion of EOIR OGC or were others involved in reaching this conclusion? For example, was PRAO consulted regarding this issue? If not, can we please forward this matter for them to consider as well?

Thank you,
Ashley Tabaddor

From: Rosenblum, Jeff (EOIR)
Sent: Tuesday, August 28, 2012 5:16 AM
To: Tabaddor, A. Ashley (EOIR)
Cc: Fong, Thomas (EOIR); Billingsley, Kelly (EOIR)
Subject: RE: Seeking Clarification

Judge Tabaddor,

As mentioned in my July 5, 2012 e-mail, under the standards set forth in 5 C.F.R. § 2635.502(a), an employee should disqualify herself from matters in which "circumstances would cause a reasonable person with knowledge of the relevant facts to question [her] impartiality in the matter."

You are a prominent advocate for the Iranian-American community, and your activities are well-documented in the public domain, including but not limited to the internet. You engage in advocacy at such a high level that you were invited by the White House Office of Public Engagement to speak on behalf of the Iranian-American community, and your speeches, presentations, and advocacy are widely available. Based on this involvement, it remains the opinion of the Office of the General Counsel (OGC) that under the standards set forth in section 502, you should disqualify yourself from matters involving respondents from Iran.

The fact that you are active in other areas, or that other Immigration Judges (IJs) have issues that might cause appearance problems, are all to be considered on a case-by-case basis. OGC has formally recommended that other IJs disqualify themselves from a particular class of matters in similar circumstances.

Moreover, the fact that "[e]very single one of [your] activities has been vetted through the ACIJ/ethics process" makes this issue no less of an appearance problem. If participation in these activities would cause large-scale recusals, they would not receive ethics approval. See 5 C.F.R. § 2635.802(b) (prohibiting an employee from engaging in outside activities "[i]f, under the standards set forth in §§ 2635.402 and 2635.502, it would require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired."). To the contrary, we have been assured by ACIJ Fong that cases affected by this determination will represent a small fraction of cases heard in the Los Angeles Immigration Court (LAIC). Moreover, based on the size of the LAIC (*i.e.*, approximately 30 IJs), it will not be difficult to reassign such cases. Further, ACIJ Fong as assured us that any such matters from which you are recused will be replaced by other

cases to ensure a fair distribution of work among all of the IJs in the LAIC, and so that there will be no reduction in your overall caseload.

In other words, subject to the standards set forth above and supervisory approval, you may generally choose what outside activities you participate in. However, those choices may have consequences, such as your ability to participate in particular matters officially. *See, e.g.,* 5 C.F.R. § 2635.502(b)(1)(v) (requiring employees to disqualify themselves from matters involving organizations in which they are active participants).

Please note that in no way is OGC suggesting that you have an actual bias. Rather, based on the circumstances as described, and utilizing the relevant standards, OGC has determined that you should disqualify yourself from cases involving respondents from Iran to avoid any appearance problems, as suggested in my earlier e-mail.

Feel free to contact me if you have any questions. Thanks.

Jeff

Jeff Rosenblum
Executive Office for Immigration Review
Office of the General Counsel
(703) 305-0799

From: Tabaddor, A. Ashley (EOIR)
Sent: Monday, August 20, 2012 2:08 PM
To: Rosenblum, Jeff (EOIR)
Cc: Tabaddor, A. Ashley (EOIR)
Subject: Seeking Clarification

Dear Jeff,

I hope you are doing well. I am writing to seek clarification on a comment you made in an email correspondence to me, dated July 5, 2012. In the comment, you stated:

"Finally, your request to participate in this roundtable has raised a separate ethics concern. Based on your representation that you are very active in the Iranian-American community, as well as your participation in this event, we recommend that you disqualify yourself from any matter involving individuals from Iran that comes before you in your capacity as an Immigration Judge. Pursuant to 5 C.F.R. § 2635.502(a), an employee should not participate in a matter in which "circumstances would cause a reasonable person with knowledge of the relevant facts to question [her] impartiality in the matter."

From this email, I am not certain if I am supposed to recuse myself from all cases cited above, and if so why. I am confused as to why my activities in the Iranian-American community would create an appearance of conflict of interest warranting recusal from all cases that involve an Iranian national as a respondent. My activities are not limited to the Iranian-American community. I am active in the legal community and in the academic community. I am also an active member of the Pacific Council on International Policy. Every single one of my activities has been vetted through the ACII/ethics process, and much of the topics and the messages that I share in my activities cross between the various groups. Thus, the level or the nature of my activities in these communities should not be a surprise to anyone at EOIR ethics office. But most importantly, what bias are we trying to avoid the appearance of? Is it because I am an Iranian-American? Would this same standard apply to an IJ who is openly gay/lesbian and hears claims of asylum based on sexual orientation? What about the IJ who is very active in his church? Should he recuse himself from all asylum claims based on persecution of Christians?

I am not trying to be difficult, but this "recommendation" deeply concerns me. If the ethics office is indeed instructing me to disqualify myself from the cases outlined above, I would request a fully analyzed opinion on the issue along with specific instructions. Otherwise, I would ask that the ethics office reconsider the "recommendation" and clarify the record on this matter.

Thank you so much for your help,
Ashley Tabaddor

Fong, Thomas (EOIR)

From: Tabaddor, A. Ashley (EOIR)
Sent: Wednesday, October 03, 2012 8:51 AM
To: Fong, Thomas (EOIR)
Cc: Tabaddor, A. Ashley (EOIR)
Subject: Proposed language

Good morning Judge Fong,

I hope you are well. Per your instructions, below is a draft text for the orders that I intend on issuing for the cases we discussed. In addition I will include a memo to the file for the cases that have had any merits hearings so that the new IJ will have some background information regarding the issues in the case. Please let me know if you have any questions or suggestions.

Thank you,
Ashley

U.S. Department of Justice
Executive Office of Immigration Review
Immigration Court
Los Angeles, California

A#

In the Matter of _____

ORDER OF THE IMMIGRATION JUDGE

Pursuant to an order from the office of EOIR General Counsel, the undersigned Immigration Judge has been instructed by the Assistant Chief Immigration Judge to recuse herself from this case effective immediately, because of the possible appearance of impropriety. It is so ordered.

Ashley Tabaddor
Immigration Judge

Fong, Thomas (EOIR)

From: Tabaddor, A. Ashley (EOIR)
Sent: Thursday, October 11, 2012 2:10 PM
To: Fong, Thomas (EOIR)
Subject: RE: Proposed language

Thank you for the clarification.

*A Ashley Tabaddor
Immigration Judge
Immigration Court
Los Angeles, California*

From: Fong, Thomas (EOIR)
Sent: Thursday, October 11, 2012 2:08 PM
To: Tabaddor, A. Ashley (EOIR)
Subject: RE: Proposed language

You are directed by me to do so as the OGC has stated that is what they require.

Thomas Y.K. Fong
Assistant Chief Immigration Judge
Immigration Court/EOIR/DOJ
606 South Olive Street, 15th Floor
Los Angeles, CA 90014
(213)894-2811
thomas.fong@usdoj.gov

From: Tabaddor, A. Ashley (EOIR)
Sent: Thursday, October 11, 2012 1:59 PM
To: Fong, Thomas (EOIR)
Cc: Tabaddor, A. Ashley (EOIR)
Subject: RE: Proposed language

Thank you Tom for your reply. Just to avoid any confusion, is it still correct that I'm under your order to recuse myself from all Iranian national cases effective immediately? Because if not, I'm not inclined to issue this recusal order at all.
Thank you,

*A Ashley Tabaddor
Immigration Judge
Immigration Court
Los Angeles, California*

From: Fong, Thomas (EOIR)
Sent: Thursday, October 11, 2012 9:05 AM
To: Tabaddor, A. Ashley (EOIR)
Subject: RE: Proposed language

If you want to use this language go ahead. I do not believe it necessary to give such detail, but it is an order under your signature and not mine. My earlier suggested revisions were only recommendations, and you are now and were previously free to ignore them.

Thomas Y.K. Fong
Assistant Chief Immigration Judge
Immigration Court/EOIR/DOJ
606 South Olive Street, 15th Floor
Los Angeles, CA 90014
(213)894-2811
thomas.fong@usdoj.gov

From: Tabaddor, A. Ashley (EOIR)
Sent: Thursday, October 11, 2012 8:43 AM
To: Fong, Thomas (EOIR)
Cc: Tabaddor, A. Ashley (EOIR)
Subject: RE: Proposed language

Dear Judge Fong,

I hope you are well. Upon further consideration, it appears that this proposed order does not comply with OPPM 05-02: Procedures for Issuing Recusal Orders in Immigration Proceedings, § IV.A., and the Ethics and Professionalism Guide, §XI (citing 5 CFR §§2635.501 to 2635.503). Both of those authorities require that a recusal order "must contain a well-reasoned opinion explaining the circumstances and the legal reasoning behind" the order.

As I have discussed with you, I do not agree with the factual characterization or the legal conclusion of the General Counsel's recommendation that I recuse myself from all cases involving Iranian nationals because of my involvement with the Iranian American community. However, because you have ordered me to follow that recommendation, and draft a proposed order that reflects it, I believe the order should be revised as follows to ensure compliance with OPPM 05-02. Again, though I do not agree with it, the following tracks the reasoning of the General Counsel recommendation, which should be included in the order to comply with OPPM 05-02. Please let me know if you have any questions or suggestions.

Thank you,

A. Ashley Tabaddor
Immigration Judge
Immigration Court
Los Angeles, California

ORDER OF THE IMMIGRATION JUDGE

Pursuant to guidance given from the Office of General Counsel, EOIR, the undersigned Immigration Judge has been instructed by the Assistant Chief Immigration Judge to recuse herself from this case effective immediately.

The General Counsel has determined that because of the undersigned Immigration Judge's involvement in the Iranian-American community, she should disqualify herself from any matter involving individuals from Iran that comes before her in her capacity as an Immigration Judge to avoid the possible appearance of impropriety.

It is ordered.

A Ashley Tabaddor
Immigration Judge

From: Fong, Thomas (EOIR)
Sent: Wednesday, October 03, 2012 2:22 PM
To: Tabaddor, A. Ashley (EOIR)
Subject: RE: Proposed language

Ashley, see my suggested revisions.

Thomas Y.K. Fong
Assistant Chief Immigration Judge
Immigration Court/EOIR/DOJ
606 South Olive Street, 15th Floor
Los Angeles, CA 90014
(213)894-2811
thomas.fong@usdoj.gov

From: Tabaddor, A. Ashley (EOIR)
Sent: Wednesday, October 03, 2012 8:51 AM
To: Fong, Thomas (EOIR)
Cc: Tabaddor, A. Ashley (EOIR)
Subject: Proposed language

Good morning Judge Fong,

I hope you are well. Per your instructions, below is a draft text for the orders that I intend on issuing for the cases we discussed. In addition I will include a memo to the file for the cases that have had any merits hearings so that the new IJ will have some background information regarding the issues in the case. Please let me know if you have any questions or suggestions.

Thank you,
Ashley

U.S. Department of Justice
Executive Office of Immigration Review
Immigration Court
Los Angeles, California

A#

In the Matter of _____

ORDER OF THE IMMIGRATION JUDGE

Pursuant to guidance given from the Office of General Counsel, EOIR, the undersigned Immigration Judge has been instructed by the Assistant Chief Immigration Judge to recuse herself from this case effective immediately to avoid the possible appearance of impropriety. It is so ordered.

Ashley Tabaddor
Immigration Judge

Fong, Thomas (EOIR)

From: Tabaddor, A. Ashley (EOIR)
Sent: Friday, December 14, 2012 5:34 PM
To: Elliot, Nina (EOIR)
Cc: Fong, Thomas (EOIR); Billingsley, Kelly (EOIR); Tabaddor, A. Ashley (EOIR)
Subject: RE: Speaking engagement
Attachments: 120304 Participation in Speaking Engagements- Annual New Pink Pages Trad....pdf

Dear Ms. Elliot,

I am writing to voice my deep dismay regarding the restriction on the use of my title imposed in your email below. Due to the subject matter of the panel and the topic of my discussion, I expressly sought to use my title with a disclaimer in the speaking engagement form I provided to ACIJ Fong and your office. When ACIJ Fong approved my request, he did so without any restrictions on the use of my title with a disclaimer, as the subject matter of my topic necessarily required disclosure and discussion of my current position. As noted in my initial request to ACIJ Fong, I previously participated as a speaker at this same event, in the same capacity, in March of last year. For that event, I requested and received approval for my attendance from both ACIJ Fong and your office. Unlike my present request, however, I was permitted to use my official title so long as it was followed by a disclaimer. I am attaching my speaking engagement request and approvals relating to my participation in last year's event for your reference.

I cannot identify any material difference between my present request and that of last year. Or, for that matter, as between my present request and numerous previous speaking engagements, involving a variety of organizations, that have covered the same subject matter and have been approved with the use of my title and an appropriate disclaimer. The restriction on the use of my title with a disclaimer effectively makes my participation on the panel a practical impossibility. As a consequence of this action, I cannot and will not be attending the panel.

Sincerely,

A. Ashley Tabaddor
Immigration Judge

From: Elliot, Nina (EOIR)
Sent: Friday, December 07, 2012 8:13 AM
To: Tabaddor, A. Ashley (EOIR)
Cc: Fong, Thomas (EOIR); Billingsley, Kelly (EOIR)
Subject: RE: Speaking engagement

Judge Tabaddor,

You have requested ethics approval to speak on Sunday, March 3, 2013 at the 5th Annual International Business Women Trade Show at the Marriott Hotel in Woodland Hills, California. This event is sponsored by NewPinkPages.com, an informational resource center that promotes women entrepreneurs. You have been asked to speak on a panel entitled "motivational speakers," scheduled from 1:00 – 2:00 p.m. You plan to discuss your personal and professional background and offer information regarding career choices and opportunities available for young people. You anticipate four co-panelists to speak with you on the panel. The International Business Women Trade Show is open to the public.

You will not receive any compensation for this activity and there is no fee to attend. You plan to attend the day-long event in addition to speaking. You are not aware of any fundraising that will occur at the event, but noted that vendors will be selling various items during the day-long event. The organization has not offered to reimburse you for the cost of attendance or waived your fee to attend. You do not plan to distribute any written materials at this event. Please

note that your supervisor, ACIJ Fong, approved you to speak at this event in your personal capacity, subject to the following ethics restrictions:

- The activity must not, in any manner, interfere with the proper and effective performance of official duties;
- The activity must not create, or appear to create, a conflict of interest with official duties;
- You must not create or allow the appearance that you are acting on behalf of EOIR or the Department, or with the sanction of EOIR or the Department;
- You must avoid the appearance that your position in the Department will influence or appear to influence the outcome of any matter you undertake in the voluntary activity;
- You must refrain from disclosing non-public information. This would include discussing any matters pending before EOIR tribunals and discussing hypothetical situations relating to EOIR or its tribunals;
- The activity must not reflect adversely upon the Department of Justice;
- Please refer to 5 C.F.R. § 2635.807, as well as 5 C.F.R. §§ 2635.701-705, for general guidelines concerning outside activities.

Because you will be participating in this activity in your personal capacity, you may not use your official title in connection with this event, and should take reasonable and prudent steps to prevent the International Business Women Trade Show and NewPinkPages.com from using your official title, including but not limited to promotional materials (such as the group picture) published before or after the event. You may include your official title and employer in your biography; however, it should not be any more prominent than any other information that is included. If you are questioned as to your DOJ position, you may disclose your title, but you must make clear that you are present in your personal capacity, and solely in connection with the volunteer activity.

If you have any questions, please feel free to contact me. Thanks.

Nina Elliot
Executive Office for Immigration Review
Office of the General Counsel
(703) 305-0274

From: Ashley Tabaddor [<mailto:ashleytabaddor@gmail.com>]
Sent: Thursday, November 29, 2012 11:07 PM
To: EOIR, Ethics (EOIR); EOIR, Ethics (EOIR)
Cc: ashley
Subject: Speaking engagement

Good evening,

I hope you are well. I have been asked to speak on a panel for motivational speakers at an upcoming 5th Annual International Business Women Trade Show. ACIJ Fong has approved the request. Attached please find a copy of the completed speaking engagement form. Please let me know if you have any questions.

Thank you,
Ashley Tabaddor

From: Fong, Thomas (EOIR)
Sent: Thursday, November 29, 2012 10:43:17 AM
To: Tabaddor, A. Ashley (EOIR)
Subject: FW: welcome back

Auto forwarded by a Rule

Judge Tabaddor, thank you it is good to be back. ACIJ Approval given.

Thomas Y.K. Fong
Assistant Chief Immigration Judge
Immigration Court/EOIR/DOJ
606 South Olive Street, 15th Floor
Los Angeles, CA 90014
(213)894-2811
thomas.fong@usdoj.gov

From: Ashley Tabaddor [mailto:ashleytabaddor@gmail.com]
Sent: Wednesday, November 28, 2012 5:29 PM

To: Fong, Thomas (EOIR)
Cc: Ashley Tabaddor; Tabaddor, A. Ashley (EOIR)
Subject: welcome back

Hi Tom,

Welcome back. I hope you had a great time during your time off. I've been asked to return as a speaker at the upcoming 5th Annual International Business Women Trade Show. This year they would like me to participate on a panel dedicated to motivational speakers. I have completed the form with all the information. Please let me know if you have any further questions.

Thank you,

Ashley