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Motions

Motions in EOIR, Immigration Court.

- Motions Generally
- Motion to Continue
- Motion to Administratively Close
- Motion for Severance
- Terminat

Motions Generally

Motions to Reopen & Motions to Reconsider are NOT included in this motions section since those are motions that are filed after a final decision. Motions to Reopen and Reconsider are included in the Appeals & Post Order Relief section, which seemed more appropriate.

(h) Visa Petitions - If a motion is based on an application for adjustment of status and there is an underlying visa petition that has been approved, a copy of the visa petition and the approval notice should accompany the motion. When a petition is subject to visa availability, evidence that a visa is immediately available should also accompany the motion (e.g., a copy of the State Department's Visa Bulletin reflecting that the priority date is "current").

If a motion is based on adjustment of status and the underlying visa petition has not yet been adjudicated, a copy of that visa petition, all supporting documents, and the filing receipt (Form I-797) should accompany the motion.

Parties should note that, in certain instances, an approved visa petition is required for motions based on adjustment of status. See, e.g., *Matter of H-A-***, 22 I&N Dec. 728 (BIA 1999), modified by** *Matter of Velarde***, 23 I&N Dec. 253 (BIA 2002).**

Filing fees for visa petitions are not paid to the Immigration Court and should not accompany the motion. The filing fee for a visa petition is submitted to DHS when the petition is filed with DHS.

OPPOSITION TO MOTIONS

General Opposition to a Motion

Matter of Lamus, **25 I&N Dec. 61, 65 (BIA 2009) (concluding that a party's opposition to a motion to reopen, "in and of itself, should [not] be dispositive of the motion without regard to the merit of that opposition");** *Matter of Hashmi,* **24 I&N Dec. 785, 791 (BIA 2009) (noting that the DHS's "unsupported opposition" to a continuance "does not carry much weight").**

The Board in *Matter of Avetisyan,* **determined for the first time that Immigration Judges and the Board have the authority to administratively close a case when appropriate, even if a party opposes it. Matter of Avetisyan, 25 I&N Dec. 688, 690-694 (BIA 2012).** *Matter of Avetisyan* **does not list court resources as a factor to consider in evaluating whether administrative closure is appropriate. In a similar context, we held that "[c]ompliance with . . . case completion goals . . . is not a proper factor in deciding a continuance request."** *Matter of Hashmi*, **24 I&N Dec. at 793–94.**

Matter of C-B-, **25 I&N Dec. 888, 890 (BIA 2012) (noting that docket efficiency does not override an alien's "invocation of procedural rights and privileges").**

Respondent's Right to Oppose Administrative Closure

To the extent that the Immigration Judge concluded that this matter does not present an "actual case[] in dispute," we do not agree. An alien in removal proceedings has a right to seek asylum and related relief from persecution. See Matter of E-F-H-L-, 26 I&N Dec. 319, 321–23 (BIA 2014) (holding that an alien in removal proceedings generally has a right to a full evidentiary hearing on applications for relief from persecution); 8 C.F.R. § 1240.11(c)(3) (2016). Therefore, assuming that his application was properly filed and that he is eligible for the relief sought, the respondent has a right to a hearing on the merits of his claim. If his application is successful, he may be eligible for lawful status in the United States, while administrative

closure provides him no legal status. This is not a case where an alien has filed for asylum with no intent to proceed on the application to a resolution.

Motion to Continue

REGULATIONS

Two regulations authorize continuances in removal cases: 8 C.F.R. § 1003.29, which permits IJs to continue a hearing for good cause shown, and 8 C.F.R. § 1240.6, which permits IJs to grant a “reasonable adjournment at his or her own instance” or for good cause shown by a requesting party. Though the regulations do not provide guidance as to what factors constitute “good cause” for a continuance, the BIA has laid out specific factors that an IJ must consider in evaluating whether “good cause” exists where the respondent is pursuing collateral relief.

CASE LAW

Matter of L-A-B-R-, 27 I&N Dec. 405 (A.G. 2018)

Matter of Hashmi, 24 I&N Dec. 785, 790-91 (BIA 2009) (family-based petition)

Matter of Rajah, 25 I&N Dec. 127, 135-36 (BIA 2009) (an employment petition)

Matter of Sanchez Sosa, 25 I&N Dec. 807, 812-13 (BIA 2012) (U visa petition)

Practice Advisory for Matter of L-A-B-R

https://www.cliniclegal.org/resources/removal-proceedings/practice-advisory-matter-l-b-r-27-dec-405-ag-2018

Motion for Continuance Practice Advisory

Matter of L-A-B-R- **and continuances to pursue collateral matters On August 16, 2018, Attorney General Sessions issued a decision in** *Matter of L-A-B-R-***, a case addressing when "good cause" exists to grant a continuance for a respondent to pursue a collateral proceeding. The decision does not overturn previous case law establishing a multifactor test for determining "good cause," but cautions against "unjustified continuances," describing them as a "significant and recurring problem" and the L-A-B-R- decision as necessary guidance to protect against "abuse" of continuances.** *L-A-B-R* **emphasizes the holding in** *Matter of Hashmi,* **that an immigration judge should rely primarily on two factors in making a good cause determination:**

1) the likelihood the respondent will receive the collateral relief sought, and

2) whether the relief will materially affect the outcome of the removal proceedings.

Other factors to be considered in a decision to grant or deny a motion for continuance include:

1) the respondent's diligence in seeking collateral relief;

2) DHS's position on the motion;

3) administrative efficiency;

4) the length of continuance requested;

5) the number of hearings held and continuances granted previously; and

6) the timing of the continuance motion. Though the immigration judge must use discretion in balancing the relevant factors supporting a continuance grant, *L-A-B-R* **states that due diligence may be absent when the respondent intends to pursue collateral relief at a future date or "appears to have unreasonably delayed filing for collateral relief" until just prior to a hearing. If there was a diligent good faith effort to proceed, however, the respondent will meet this prong. In addition, under L-A-B-R- DHS' decision to consent, oppose or fail to take a position on a continuance motion should not be dispositive. Citing the 2017 EOIR memo, L-A-B-R emphasizes efficiency in the good cause analysis. Immigration judges' interpretation of this part of the decision will be critical in how** *L-A-B-R***.**

8 CFR 1003.18

Motion to Administratively Close

Quick Summary

The Attorney General overruled *Matter of Castro-Tum* **in** *Matter of Cruz-Valdez* **in 2021. Although** *Matter of Cruz-Valdez* **did not, in and of itself, establish a new administrative closure scheme, it restored the Board's earlier decisions in** *Matter of Avetisyan* **and** *Matter of W-Y-U-* **to the status of binding precedents and instructed immigration judges to apply the administrative closure rules from those cases.** *Matter of Avetisyan* **and** *Matter of W-Y-U-* **are detailed below.**

Admin Closure Factors

In sum the Board instructed immigration judges to consider the following factors in deciding whether to grant administrative closure in a given case:

1. *the reason it is sought*
2. *the basis for any opposition* <- The most important factor
3. *the likelihoo*
4. *the duration*

BIA Precedent and the Rules Have Been in Flux

Matter of W-Y-U- **provided specific guidance to immigration judges on adjudicating motions for administrative closure where one party (most often the government) objects. In such cases, immigration judges should consider whether the opposing party provided a persuasive reason to proceed to resolving the removal proceedings on the merits.**

Because *Matter of S-O-G- & F-D-B-* **closely followed** *Matter of Castro-Tum***, it was placed on shaky ground by the decision to overrule the latter. Moreover, one could argue it was effectively, if not expressly, abrogated by the direction in** *Matter of Cruz-Valdez* **to follow** *Matter of Avetisyan* **and** *Matter of W-Y-U* **with regard to motions to administratively close proceedings. It would be difficult to say the least to try to reconcile** *Matter of S-O-G- & F-D-B-* **with** *Avetisyan* **and** *W-Y-U-***.**

In *Matter of Coronado Acevedo***, Attorney General Garland made what was arguably implicitly clear in** *Matter of Cruz Valdez* **explicit and overruled** *Matter of S-O-G- & F-D-B-***. While** *Matter of S-O-G- & F-D-B-* **is not identical to** *Matter of Castro-Tum***, the Attorney General explained that its analysis followed directly from the central premises of the latter.**

J-A-A-G A-L-M-D-

(1) The primary consideration for an Immigration Judge in evaluating whether to administratively close or recalendar proceedings is whether the party opposing administrative closure has provided a persuasive reason for the case to proceed and be resolved on the merits. Matter of Avetisyan, 25 I&N Dec. 688 (BIA 2012), clarified.

(2) In considering administrative closure, an Immigration Judge cannot review whether an alien falls within the enforcement priorities of the Department of Homeland Security, which has exclusive jurisdiction over matters of prosecutorial discretion.

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BIA's

Full Decision at https://www.justice.gov/eoir/page/file/958526/dl

While Matter of Avetisyan provides a list of factors to be considered, we now clarify that decision and hold that the primary consideration

for an Immigration Judge in determining whether to administratively close or recalendar proceedings is whether the party opposing administrative closure has provided a persuasive reason for the case to proceed and be resolved on the merits.

[Admin Closure, a Tool for Immigration Court.](#)

[Practice Advisory](#)

Related Articles

AG Eliminates Precedent Restricting Administrative Closure

On November 17, 2022, U.S. Attorney General Merrick Garland published an immigration precedent decision in the *Matter of Coronado Acevedo,* **28 I&N Dec. 648 (A.G. 2022) [PDF version]. The Attorney General overruled a prior Attorney General precedent,** *Matter of S-O-G- & F-D-B-,* **27 I&N Dec. 462 (A.G. 2018) [PDF version], which had been published by former Attorney General Jeff Sessions in 2018.** *Matter of S-O-G- & F-D-B-* **limited the circumstances in which an immigration judge could dismiss or terminate removal proceedings through administrative closure. This decision generally disfavored alien respondents by precluding immigration judges from dismissing proceedings to allow them to obtain status or other forms of relief without departing or being removed from the United States.** *Matter of Coronado Acevedo* **is generally favorable to aliens in proceedings insofar as it returns the understanding of the immigration judge's authority to dismiss proceedings to what it was before the Attorney General decision in** *Matter of S-O-G- & F-D-B-* **and** *Matter of Castro-Tum***, 27 I&N Dec. 271 (A.G. 2018) [PDF version], the latter of which was previously vacated by Attorney General Garland in** *Matter of Cruz-Valdez***, 27 I&N Dec. 271 (A.G. 2018) [PDF version].**

Motion to Terminate

Motion to Terminate

Motion for Severance

Motion to Withdraw

Motion to Withdraw as Attorney of Record

A motion to withdraw as counsel must comply with Matter of Rosales (BIA 1988).

Counsel must file a motion with the Court providing:

1. **The Respondent's last known address.**
2. **Evidence that counsel attempted to contact the Respondent at their last known address with the following information: Date, time, and place, of scheduled hearing.**

If those requirements are not met then the motion to draw may only be *conditionally granted.*

Matter of Rosales, Interim Decision #3064 (BIA 1988)

A-27188547 | Decided by Board April .21, 1988

(1) Where an attorney asks to withdraw from representation of an alien, his request for withdrawal should include evidence that he attempted to advise his client, at his last known address, of the date, time, and place of the

scheduled hearing, and he should also provide the immigration judge with the alien's last known address, assuming it is more current than any address previously provided to the immigration judge.

(2) Unless these requirements are met, counsel's withdrawal should be only conditionally granted, that is, granted for all purposes except receipt of service of documents.