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# Motions

Motions in EOIR, Immigration Court.

- Motion to Continue

# 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.

### **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.<sup>15</sup> The decision does not overturn previous case law establishing a multifactor test for determining “good cause,”<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup> 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. <sup>19</sup> 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.<sup>20</sup> If there was a diligent good faith effort to proceed, however, the respondent will meet this prong.<sup>21</sup> 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.<sup>22</sup> 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**