

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

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