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.

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