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**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
BOSTON, MASSACHUSETTS**

IN THE MATTER OF)
)
)
Respondent) **File No. A**
)
)
IN REMOVAL PROCEEDINGS)

Immigration Judge Paul M. Gagnon Next Hearing:

JOINT MOTION TO TERMINATE WITHOUT PREJUDICE

Respondent, , joined by the Department of Homeland Security, Immigration and Customs Enforcement, Office of Chief Counsel files this motion requesting that these proceedings be terminated without prejudice. In support thereof, Respondent states the following:

1. Jurisdiction

Respondent is set to appear before Judge Paul M. Gagnon in a Master Calendar Hearing on . This Court has jurisdiction over these proceedings. *See* 8 C.F.R. § 1003.14.

2. Background

Respondent is a thirty-seven year old citizen of Brazil. She is the mother of three children, ages six, four and three, all of whom were born in the United States. Respondent came to the United States on through Miami Florida as a B-2 tourist. She has remained in the U.S. ever since. In 1999 she met X, the father of her three daughters. Respondent has been the victim of domestic abuse by X during their relationship. In 2002, X was arrested for domestic violence simple assault, after he pushed respondent to the ground, grabbed her by the neck and hit her forehead into the floor three of four times. Respondent reported this incident to the police, gave an oral statement regarding the incident, and sought a restraining order after the incident. She also appeared at the criminal hearing for Mr. X on this charge.

In 2008, Respondent got two additional restraining orders against Mr. X. A final restraining order was issued after a hearing on June 18, 2008 and the Nashua District Court Judge found that Mr. X had committed the following acts of Domestic Violence: assault or reckless conduct as defined by RSA §631:1 through RSA §631:3; and criminal threatening as defined in RSA §631:4. Ten days later on June 28, 2008, Mr. X was arrested for violating this restraining order after a neighbor reported him for being at the Respondent's residence.

Respondent cooperated with the police with their investigation into the violation of the

restraining order crime. Captain S of the Nashua Police Department has certified that the Respondent is a victim of domestic violence who has been helpful in an investigation of that crime.

All of the above facts were demonstrated in Respondent's I-918 Petition for U Nonimmigrant Status and supporting documentation filed with USCIS.

Respondent filed her I-918 Petition for U Nonimmigrant Status with the Vermont Service Center on October 30, 2008. Respondent also filed form I-192 Application for Permission to Enter as Nonimmigrant seeking a waiver of grounds of inadmissibility. Respondent's I-918 and I-192 were approved on July 23, 2009. Respondent is now in lawful U Nonimmigrant valid from July 23, 2009 through July 22, 2013. (Exhibits A and B)

3. The U Visa

The U visa was created by Congress on October 28, 2000. (The Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. 106-386, is codified at sections 101(a)(15)(U)(iii), 214(o), and 245(1) of the Immigration and Nationality Act (INA).) The intent of the U visa is to encourage immigrants to step forward with vital information relating to crime. "This nonimmigrant status was created to strengthen the ability of law enforcement agencies to detect, investigate and prosecute cases of domestic violence, sexual assault, trafficking of persons and other criminal activity of which aliens are victims, while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States." *See* Exhibit AA, Yates, Associate Director, Operations, Centralization of Interim Relief for U Nonimmigrant Status Applicants, Memorandum for Director, Vermont Service Center, USCIS mem. (Oct. 8, 2003)

The U visa is available for individuals who cooperate in the investigation or prosecution of the perpetrators of certain criminal offenses. Not only must the applicant prove that she was

the victim of one of the above-listed crimes, but also that she suffered substantial mental or physical abuse as a consequence. The crime must be in violation of United States laws or have occurred in the United States. In addition, the applicant must prove that she “has been helpful, is being helpful, or is likely to be helpful” to a federal, state, or local law enforcement officer, prosecutor, judge, or to a local authority in investigating or prosecuting the criminal activity. To prove this, the U visa applicant must obtain certification from a law enforcement official attesting to the fact that the alien has been, is likely to be, or is being helpful in the investigation or prosecution of criminal activity designated in the VTVPA. Respondent has met all the requirements of the U visa and been approved.

USCIS has sole jurisdiction over all petitions for U nonimmigrant status. 8 C.F.R. §214.14(c)(1). An alien who is in removal proceedings must file a Form I-918 directly with USCIS. 8 C.F.R. § 214.14(c)(1)(i). U.S. Immigration and Customs Enforcement counsel may agree, as a matter of discretion, to file, at the request of the alien petitioner, a joint motion to terminate proceedings without prejudice with the immigration judge or Board of Immigration Appeals, whichever is appropriate, while a petition for U nonimmigrant status is being adjudicated by USCIS. *Id.* If USCIS determines that the petitioner has met the requirements for U-1 nonimmigrant status, USCIS will approve Form I-918 and also will concurrently grant U-1 nonimmigrant status. 8 C.F.R. § 214.14(c)(5)(i). ICE counsel may agree, as a matter of discretion, to join a motion to terminate removal proceedings. *Id.*

5. Prejudice to Respondent if this motion is denied

Respondent is presently in valid U Nonimmigrant status and has been issued an employment authorization document as a result. This status allows Respondent to be present in the U.S. and work for a period of up to four years. After three years of continuous presence in U Nonimmigrant Status, Respondent will be eligible to file for permanent residence. 8 C.F.R.

§245.24(b). If the motion to terminate is not granted Respondent will be forced to return to Brazil, which would break her continuous presence required for adjustment of status possibly making her ineligible for permanent residence.

In addition, if forced to return to Brazil, Respondent could possibly be forced to return without her three U.S. Citizen children. Respondent has recently been granted custody of her three U.S. Citizen children and is presently in hearings to decide their father (and Respondent's abusive ex-boyfriend) X's visitation. If Respondent were forced to return to Brazil, her custody of her children could be jeopardized.

Moreover, the Government will not be prejudiced by the granting of this Motion as it is not prohibited from instituting removal proceedings under Section 240 of the Act for conduct committed after admission, for conduct or a condition that was not disclosed to USCIS prior to the granting of U nonimmigrant status, for misrepresentations of material facts in Form I-918 or Form I-918, Supplement A and supporting documentation, or after revocation of U nonimmigrant status. Also, we are requesting that this motion to terminate be granted without prejudice.

6. Conclusion

For the foregoing reasons, Respondent joined by the Office of Chief Counsel, respectfully requests that the Court terminate these proceedings as Respondent has been granted U Nonimmigrant status by the Service.

Respectfully submitted,

Jeanne Brennan Funk, Esq.
Attorney for the Respondent

Date

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For the Department:

Date

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