

- 3) As of the date of this motion, USCIS is adjudicating I-918 petitions submitted on or before August 25, 2014. Tab B, pp. 2-3. It is highly likely that Respondent will not receive a decision from USCIS on her I-918 petition before the date of her next master calendar hearing.
- 4) Respondent's counsel has made several requests to opposing counsel to request a *prima facie* determination on Respondent's I-918 petition from USCIS, as required by the September 25, 2009 "Guidance Regarding U Nonimmigrant Status (U visa) Applicants in Removal Proceedings or with Final Orders of Deportation or Removal" and to "work with" USCIS to promote adjudication of the application within 45 days, pursuant to the Department of Homeland Security's February 4, 2011 Policy Memorandum PM-602-0029. Tab C, pp. 4-9. Respondent's counsel made these requests to opposing counsel verbally on the record at Respondent's December 22, 2015 hearing, on the phone to duty attorney Kristen Stoker on July 11, 2016, and via e-mail on September 22, 2016. *See* Tab D, pp. 10-11. None of the requests were granted.
- 5) As stated in *Matter of Avestisyan*, 25 I&N Dec. 688 (BIA 2012), "[in] general, administrative closure may be appropriate to await an action or event that is relevant to immigration proceedings but is outside the control of the parties or the court and may not occur for a significant or undetermined period of time," as is the case here.
- 6) Considering the Court's substantial docket volume and unknown wait time for USCIS to adjudicate the I-918 Petition, the Respondent requests that this Court administratively close these proceedings to allow Respondent to await adjudication.

7) Furthermore, the Respondent acknowledges her continuing obligation to timely notify the Court of any change of address even if this motion is granted.

Therefore, Respondent, respectfully requests this Court grant this Motion to Administratively Close Proceedings.

Respectfully submitted this 13th day of September 2017.

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**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
CLEVELAND, OHIO**

In the Matter of [REDACTED]

File No.: A [REDACTED]

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of Respondent's Motion to Administratively Close Proceedings, it is HEREBY ORDERED that the motion be ___ Granted ___ Denied because:

- _____ DHS does not oppose the motion.
- _____ A Response to the motion has not been filed with the court.
- _____ Good cause has been established for the motion.
- _____ The Court agrees with the reasons stated in the opposition to the motion
- _____ The Motion is untimely per _____.
- _____ Other:

Deadlines:

- _____ The application for relief must be filed by _____.
- _____ The Respondent must comply with DHS biometrics instructions by _____.

Date

Immigration Judge Brown

Certificate of Service

This document was served by: Mail Personal Service
To: Alien Alien c/o Custodial Officer Alien's Atty/Rep DHS

Date: _____

By: Court Staff _____

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
CLEVELAND, OHIO

IN THE MATTER OF:

In Removal Proceedings

Immigration _____

)
)
)
)
)
)
)

File No.: A _____

Next Hearing: _____

MOTION TO ADMINISTRATIVELY CLOSE PROCEEDINGS

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Certificate of Service

I, Kathleen C. Kersh, counsel for Respondent [REDACTED], hereby certify that a copy of this Motion to Administratively Close Proceedings was mailed by certified, return-receipt mail to counsel for ICE at the following address: Office of Chief Counsel, 925 Keynote Circle, Room 201, Brooklyn Heights, Ohio 44131 this 13th day of September, 2017.

Kathleen C. Kersh, Esq.

**DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
801 WEST SUPERIOR AVENUE, SUITE 13-100
CLEVELAND, OH 44113**

In The Matter Of:

[REDACTED]

Respondent.

File Number:

[REDACTED]

Date: **OCT 26 2017**

In Removal Proceedings

Docket: Cleveland Non-Detained (CEL)

Re: The Respondent's Motion to Administratively Close Proceedings

ON BEHALF OF THE RESPONDENT:

Kathleen C. Kersh, Esq.
Advocates for Basic Legal Equality, Inc.
130 W. Second St., Ste. 700E
Dayton, Ohio 45402

ON BEHALF OF THE DHS:

Steven G. Stransky, Assistant Chief Counsel
Office of the Chief Counsel
Immigration & Customs Enforcement
925 Keynote Circle, Room 201
Brooklyn Heights, Ohio 44131

DECISION OF THE IMMIGRATION JUDGE

I. Procedural History

The Respondent is a native and citizen of Guatemala. Exh. 1. She arrived in the United States at or near Nogales, Arizona, on or about December 23, 2014. *Id.* On December 24, 2014, the Department of Homeland Security ("DHS") initiated removal proceedings against the Respondent by filing a Notice to Appear ("NTA") with the Cleveland Immigration Court. *Id.* The NTA alleges the above facts and charges the Respondent with inadmissibility under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (present without admission or parole). *Id.*

At a master calendar hearing conducted on November 5, 2015, the Respondent admitted all of the factual allegations on her NTA and conceded removability as charged. On December 22, 2015, the Respondent filed a Form I-589, Application for Asylum and for Withholding of Removal.

On September 14, 2017, the Respondent, through counsel, filed a motion to administratively close her removal proceedings. *See* Resp't Mot. to Administratively Close Proceedings (Sept. 14, 2017) ("Respt Mot."). The DHS filed a response in opposition on September 18, 2017. *See* DHS Opp'n to Resp't Mot. for Administrative Closure (Sept. 18, 2017) ("DHS Opp'n").

II. Legal Standard

The Court has the authority to administratively close removal proceedings under appropriate circumstances, even if one party opposes it. *Matter of Avetisyan*, 25 I&N Dec. 688, 694 (BIA 2012). Administrative closure is a procedural tool under which a case is “temporarily remove[d] from an Immigration Judge’s active calendar.” *Id.* at 692. To direct the Court’s evaluation of a request for administrative closure, the Board of Immigration Appeals (“BIA” or “the Board”) has articulated six specific, but nonexclusive, factors for the Court to consider, which include:

- (1) the reason administrative closure is sought;
- (2) the basis for any opposition to administrative closure;
- (3) the likelihood the respondent will succeed on any petition, application, or other action he or she is pursuing outside of removal proceedings;
- (4) the anticipated duration of the closure;
- (5) the responsibility of either party, if any, in contributing to any current or anticipated delay; and
- (6) the ultimate outcome of removal proceedings (for example, termination of the proceedings or entry of a removal order) when the case is recalendared before the Immigration Judge...

Id. at 696. Administrative closure would not be appropriate “if the request is based on a purely speculative event or action.” *Id.* The Board subsequently “clarif[ied] . . . that the primary consideration for an Immigration Judge in determining whether to administratively close . . . 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 W-Y-U-*, 27 I&N Dec. 17, 20 (BIA 2017).

III. Analysis and Findings

The Respondent requests administrative closure to allow United States Citizenship and Immigration Services (“USCIS”) to adjudicate her pending Form I-918, Petition for U-Nonimmigrant Status (“U-Visa”). *See* Resp’t Mot. at 1. The Respondent filed her U-Visa petition on December 10, 2015, and USCIS is currently adjudicating U-Visa petitions filed on or before August 25, 2014. *Id.* at Tabs A, B. The Respondent has also submitted correspondence between her counsel and DHS counsel relaying her multiple requests for a *prima facie* determination of her U-Visa petition pursuant to USCIS’s policy memorandum. *Id.* at Tab D. The DHS opposes the Respondent’s motion, arguing that it is unclear if the Respondent will succeed on her application, and thus requests the Respondent’s case remain open so she can provide “periodic updates” on the status of her application.

The Court will grant the Respondent’s motion for administrative closure. The DHS’s opposition premises on the notion that the Respondent has not demonstrated the likelihood of success on the merits for her petition, yet the DHS has had multiple attempts to conduct a *prima facie* determination on the Respondent’s petition pursuant to their internal policy memo, which it failed to do. Upon review of the *Avetisyan* factors, the Court finds that the Respondent has presented a compelling reason to administratively close proceedings, and he has provided information on the anticipated duration of the closure based on USCIS’s current processing dates. The Court further finds that the DHS’s articulated reasoning does not weight against

finding administrative closure proper in this case. It would be procedurally wasteful to adjudicate the Respondent's I-589 application at this time. Finally, the Court considers the ultimate outcome when the case will be re-calendared. When the Respondent's U-Visa is granted, the parties will likely move to terminate proceedings, saving the Court substantial judicial resources. Therefore, under the totality of the circumstances, the Court finds it proper to administratively close the Respondent's proceedings pending adjudication of the Respondent's U-Visa petition.

ORDER

Accordingly, it is hereby ordered that:

1. The Respondent's motion to administratively close proceedings is **GRANTED**.

So Ordered.

Date: **OCT 26 2017**



Alison M. Brown
Immigration Judge