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**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
TUCSON, ARIZONA**

In the Matter of:)
)
X,) **File No.: A-X**
Respondent)
)
In removal proceedings)
_____)

Honorable Sean H. Keenan

**BRIEF ON GOOD CAUSE FOR CONTINUANCE WHEN U-1 NONIMMIGRANT
STATUS APPLICATION PENDING**

1 This Court, by and through visiting Immigration Judge Grier, requested briefing
2 on good cause for a continuance when an application for a U-Visa is pending.
3 Respondent submits the requested briefing, and this briefing demonstrates that his
4 request for a continuance, pending the final adjudication of his U-Visa is reasonable
5 under the circumstances.
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7 **I. Factual and Procedural History**

8 Mr. X was placed into removal proceedings upon the service of a Notice to Appear
9 on or around November 9, 2011. In or around August of 2013, Mr. X retained the
10 services of counsel undersigned for representation in removal proceedings.
11 Respondent appeared with counsel, for the first time, on August 13, 2013. At that
12 hearing, this Court ordered Respondent to return to Court on July 8, 2014 with written
13 pleadings. At the July 8, 2014 hearing, Respondent submitted written pleadings and
14 advised the Court that he was in the process of submitting an application to USCIS for
15 U-1 Nonimmigrant Status. The Court set a Master Calendar Hearing for July 21,
16 2015—the purpose of that hearing being to ascertain the status of the U Visa
17 application. The Court *sua sponte* moved the July 21, 2015 hearing date to September
18 29, 2015. On September 29, 2015, the Respondent demonstrated that his application
19 for U status had been submitted in September of the year prior. The Court set a
20 hearing date of March 22, 2016—again for the status of the U Visa. On March 22,
21 2016 the Court building was closed due to a threat to the building. The case was reset
22 to August 23, 2016—and at the August 23, 2016 Master Calendar Hearing the Court
23 again requested the parties return on May 16, 2017 to advise the Court on the status
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1 of the U Visa application. The Court *sua sponte* moved the May 16, 2017 hearing date
2 to June 20, 2017 and on that date Respondent advised the Court that, as in hearings
3 past, his application for U-1 Nonimmigrant status remained pending. Visiting
4 Immigration Judge Grier requested briefing regarding “good cause” for a continuance
5 where an application for a U Visa is pending.

6 During the pendency of removal proceedings, Mr. X was the victim of a
7 felonious assault. This incident took place in May of 2013. As noted, above, Mr. X
8 hired legal counsel in August of 2013. By February of 2014, Mr. X was awaiting the
9 requisite “law enforcement certification” to apply for a U Visa, from the Tucson Police
10 Department. Mr. X received that law enforcement certificate in April of 2014, and
11 submitted his completed application for U-1 Nonimmigrant status in September of
12 2014. See Receipts, Tab A. At each Master Calendar Hearing subsequent to the
13 submission of the completed U Visa application, Mr. X has advised the Court that the U
14 Visa application remains pending with USCIS, through no fault of his own.¹
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16 17 **II. Good Cause for a Continuance**

18 The Board of Immigration Appeals has directly addressed the issue of whether the
19 EOIR should grant a continuance for a Respondent with a pending U Visa application
20 in *Matter of Sanchez-Sosa*, 25 I&N Dec. 807 (BIA 2012). In *Sanchez-Sosa* the Board
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24 ¹ Pursuant to the above-outlined hearing history, it appears that since hiring counsel—and also since becoming the
25 victim of qualifying criminal activity for the U Visa—Respondent has appeared at 5 hearings: (1) his initial
appearance with counsel, (2) the July 2014 date at which he submitted written pleadings, and (3) the September
2015, August 2016, and June 2017 dates at which he has consistently advised the Court of the status of his U-1
Nonimmigrant Status application.

1 lays out the framework for this Court to determine whether “good cause” exists to grant
2 a continuance for adjudication of the U Visa.

3 The Board addresses three factors for the Court’s consideration:

- 4 1. The response of the Department of Homeland Security to the alien’s motion to
5 continue,
- 6 2. Whether the underlying visa petition is prima facie approvable,
- 7 3. The reason for the continuance and any other procedural factors.

8 The Board defines “prima facie eligibility,” notes that “an alien who has filed a prima
9 facie approvable petition for a U Visa with the United States Citizenship and
10 Immigration Services will ordinarily warrant a favorable exercise of discretion for a
11 continuance for a reasonable period of time,” and provides guidance to the Court as to
12 how to evaluate the DHS’s opposition to a continuance. *Id.*

13 Prima facie eligibility will be demonstrated in a U Visa case where “it is likely the
14 respondent will be able to show the he suffered “substantial physical or mental abuse”
15 as a victim of qualifying criminal activity.” *Id.*, at 813. Further, the respondent must
16 demonstrate that he has relevant information and has been, is being, or will be helpful
17 to authorities investigating and prosecuting the crime. *Id.* “This requirement may be
18 shown if the alien has obtained the LEC certification.” *Id.* Finally, if the alien is
19 inadmissible, the IJ should assess the likelihood that the USCIS will exercise its
20 discretion favorably under the regulatory standard at 8 CFR Section 212.17(b)(2). *Id.*,
21 at 814. Again, where prima facie eligibility is established, the Board has held that a
22 favorable exercise of discretion in granting the continuance is ordinarily warranted. *Id.*

23 Additionally, the Board provides some guidance as to how the Court should
24 weigh the Department’s opposition to a continuance. “Government opposition that is
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1 reasonable and supported by the record” is a significant consideration, while
2 “unsupported opposition does not carry much weight.” Id., at 813. Importantly, the
3 Board further noted that where DHS opposes the continuance “the focus of the inquiry
4 is on the likelihood of success” of the visa application. Id. Here, Respondent is prima
5 facie eligible, and the DHS opposition is not reasonable.

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7 **III. Argument**

8 Mr. X has submitted a prima facie approvable application for U-1 Nonimmigrant
9 status. To that end, he has attached a full copy of his original application. Tab A. The
10 Court will see that Mr. X was the victim of a felonious assault, which is a qualifying
11 crime for U-1 eligibility. See Copy of Application, Tab B. Mr. X did receive an “LEC” or
12 law enforcement certification from the Tucson Police Department, which is evidence
13 that he has been helpful to authorities investigating and prosecuting that assault. Id.
14 Finally, Mr. X only ground of inadmissibility is for entry without inspection. He has
15 submitted the requisite application to waive this ground of inadmissibility, and asserts
16 that he has met the broad standard required for a grant of this waiver—that a grant of
17 the waiver is in the public or national interest. Having established prima facie eligibility,
18 the Court should favorably exercise its discretion and grant an additional continuance.

19
20 The DHS opposition hinges primarily on the long duration of these proceedings.
21 However, the procedural history laid out, *supra*, demonstrates that at the outset of
22 proceedings, this Court granted Respondent an opportunity to retain counsel. Shortly
23 before he retained counsel, he became the victim of an armed attacker. He retained
24 counsel, who appeared with him in August of 2013. He was ordered to provide written
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1 pleadings at his next hearing. He did comply with this order, and informed the Court
2 that he was well underway in the project of completing his U Visa application. By the
3 next hearing, his application for U Status had been pending for approximately one
4 year. And the application has remained pending at every hearing since.

5 Respondent has not received any requests for additional evidence from USCIS
6 during the pendency of his application—so there is no failure to comply with any
7 aspects of his visa application. The Court is aware that U Visa processing times have
8 slowed dramatically in the last few years. Counsel undersigned does a substantial
9 amount of U Visa work, and believes that USCIS is currently approving U Visa
10 applications submitted on or before May of 2014. As Respondent's U Visa application
11 was submitted in September of 2014, it will be some months before his U Visa is
12 approved. But, again, this delay is not the doing of Respondent. As noted by the
13 Board in *Sanchez-Sosa*, "If the alien shows that he has filed a completed application
14 before the USCIS, including the LEC, and the petition appears to meet the necessary
15 criteria to be granted, then any delay not attributable to the alien "augurs in favor of a
16 continuance." *Id.*, at 814, citing *Matter of Hashmi*, 24 I&N Dec. 785, 793 (BIA 2009).
17 Further, "Delays in the USCIS approval process are no reason to deny an otherwise
18 reasonable continuance request." *Id.*, at 814, citing *Malilia v. Holder*, 632 F.3d 598,
19 606 (9th Cir. 2011).

21 **IV. Conclusion**

22 For the reasons laid out herein, Respondent asserts that there is good cause to
23 grant him an additional continuance for final adjudication of his application for U-1
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1 Nonimmigrant Status. A separate motion requesting a continuance accompanies this
2 brief.

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4 **RESPECTFULLY SUBMITTED this 12th day of July, 2017.**

5
6 **LAW OFFICES OF MATTHEW H. GREEN**

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8

JESSE EVANS-SCHROEDER
9 **Attorney for the Respondent**

10
11 **ORIGINAL** of the foregoing
12 delivered this 12th day of
July, 2017, to:

13 **Hon. Sean H. Keenan**
14 Executive Office of Immigration Review
15 300 W. Congress, Suite 300
Tucson, AZ 85701

16 **Copy of the foregoing this date to:**

17 **Offices of Chief Counsel**
18 6431 South Country Club
Tucson, AZ 85706