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**U. S. DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
TUCSON, ARIZONA**

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In the Matter of: )  
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**ERP** )  
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 )  
In removal proceedings. )  
\_\_\_\_\_ )

**File No.: A000 000 000**

Immigration Judge Thomas O'Leary

Next Hearing: August 10, 2017 at 9:30AM

**RESPONDENT'S MOTION TO CONTINUE OR ADMINISTRATIVELY CLOSE  
REMOVAL PROCEEDINGS  
PENDING USCIS ADJUDICATION OF U VISA PETITION**

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**File No.: A000 000 000**

**RESPONDENT'S MOTION TO  
CONTINUE OR ADMINISTRATIVELY  
CLOSE REMOVAL PROCEEDINGS  
PENDING USCIS ADJUDICATION  
OF U VISA PETITION**

Respondent, through her undersigned counsel, hereby moves this Court to continue or administratively close her removal proceedings pending USCIS adjudication of her pending U visa petition. This motion is based on the following:

**I. PROCEDURAL HISTORY**

1. Respondent was detained and issued a Notice to Appear (NTA) on August 6, 2016,

charging that she is subject to removal under INA § 237(a)(1)(B) for having remained in the U.S. for longer than permitted after her admission as a nonimmigrant on September 28, 2015.

2. On August 7, 2016, Respondent was released on her own recognizance and has reported to Immigration and Customs Enforcement as directed since her release. She appeared unrepresented at one or more Master Calendar hearings.

3. Undersigned counsel entered her appearance in this case on February 2, 2017.

4. Respondent filed written pleadings at her next Master Calendar hearing on March 23, 2017. In her written pleadings, Respondent admitted the allegations, and conceded that she is subject to removal under INA § 237(a)(1)(B). The Immigration Judge sustained the charge.

5. In her written pleadings, Respondent also informed the Court that she is eligible for a U visa under INA § 101(a)(15)(U), and that she had already obtained a U visa certification (Form I-918 Supplement B) signed by the Tucson City Prosecutor. She sought and was granted a continuance to file her U visa petition and to permit USCIS to adjudicate her U visa petition. She was granted a continuance until June 22, 2017.

6. At her continued Master Calendar hearing on June 22, 2017, Respondent informed the Court that she had filed her U visa petition (Form I-918) with the USCIS Vermont Service Center (VSC), and she sought a further continuance pending USCIS adjudication of the U visa petition. A copy of the USCIS filing receipt for the I-918 is attached as Exhibit A.

7. The Immigration Judge granted Respondent a continuance until August 10, 2017, for attorney preparation, to file any and all applications for relief that could be granted by the Court. The Judge stated that if Respondent did not file any such applications for relief at the August 10 Master Calendar hearing, he would reset the case for a hearing on Voluntary Departure.

8. Respondent is not eligible at this time for any relief that could be granted by this Court. Her only available relief is her pending U visa petition.

## II. LEGAL AUTHORITY AND EVIDENCE

9. The Immigration Judge may grant a continuance for good cause shown. 8 C.F.R. § 1003.29. In *Matter of Sanchez-Sosa*, 25 I&N Dec. 807 (BIA 2012), the Board of Immigration Appeals directly addressed the issue of whether the Immigration Judge should grant a continuance to a Respondent who has a U visa petition pending with USCIS. The Board stated that “As a general rule, there is a rebuttable presumption that an alien who has filed an a prima facie approvable application with USCIS will warrant a favorable exercise of discretion for a continuance for a reasonable period of time.” *Id.* at 815. The Board restated this general rule in almost identical language in two recent unpublished cases where Respondents appealed Immigration Judge denials of motions to continue, and remanded the proceedings to the Immigration Judge for consideration of good cause applying the factors set forth in *Sanchez-Sosa*. Copies of the two unpublished decisions are attached as Exhibits B and C.

10. In *Sanchez-Sosa*, the Board articulated three factors that the Immigration Judge should consider to determine whether there is good cause to grant a continuance pending USCIS adjudication of a U visa petition:

- (1) the DHS response to the motion;
- (2) whether the underlying U visa petition is prima facie approvable
- (3) the reason for the continuance and other procedural factors

*Sanchez-Sosa* at 812-13. In the following paragraphs we address each of the factors.

11. **(1) DHS response to the Motion.** Prior to filing this motion or serving a copy on DHS, Respondent's counsel contacted counsel for DHS by email to ask DHS' position regarding a further continuance in this case. DHS counsel's response was simply that DHS is opposed to the continuance and wishes to move this case forward to the merits. DHS opposition carries little weight unless it is reasonable and supported by the record. *Sanchez-Sosa* at 813.

12. **(2) Whether the underlying U visa petition is *prima facie* approvable.** If DHS opposes the continuance, the Immigration Judge should inquire as to the likelihood of success on the merits of the U visa petition. *Id.* at 813.

13. The basic requirements for a U visa are set forth in INA § 101(a)(15)(U)(i):

- (I) The petitioner has suffered substantial physical or mental abuse as a result of having been the victim of qualifying criminal activity described in clause (iii) ;
- (II) The petitioner possesses information concerning the qualifying criminal activity;
- (III) The petitioner has been helpful, is being helpful, or is likely to be helpful to a Federal, State or local law enforcement official, prosecutor, judge, to the Service, or to other authorities investigating or prosecuting the qualifying criminal activity;
- (IV) The criminal activity described in clause (iii) occurred in the U.S. or violated the laws of the U.S. or its territories or possessions.

INA § 101(a)(15)(U)(i)(I)-(IV). See also 8 C.F.R. §§ 214.14(b). A U visa petition must include a Law Enforcement Certification (LEC) on Form I-918 Supplement B, signed by one of the entities listed in INA § 101(a)(15)(U)(i)(III). INA § 214(p), 8 C.F.R. § 214.14(c)(2)(i). A properly executed and signed LEC is *prima facie* evidence that the U visa petitioner meets the requirements of possessing information, helpfulness, and that the criminal activity violated U.S.

law. INA § 101(a)(15)(U)(i)(II), (III) and (IV). To demonstrate that she has suffered substantial physical or mental abuse as a result of having been the victim of the qualifying criminal activity, a U visa petitioner must provide documentary evidence of the abuse, including a personal statement, and any other evidence she is able to provide, such as medical or counseling records, police reports, or other documentation of substantial abuse. INA § 101(a)(15)(U)(i)(I); 8 C.F.R. §§ 214.14(b)(1).

14. If a U visa petitioner is subject to any grounds of inadmissibility, as part of her U visa petition, she must also file an application for a waiver on Form I-192. 8 C.F.R. §§ 214.14(b) and 214.14(c)(2)(iv); *See Sanchez-Sosa* at 814. USCIS has broad discretion to grant the waiver pursuant to INA § 212(d)(14), which is specific to U visa petitioners, “if it is in the public or national interest to do so.”

15. Respondent has filed a *prima facie* approvable U visa petition. A copy of the signed LEC that Respondent submitted with her U visa petition is attached as Exhibit D. A complete copy of Respondent's U visa petition, that includes the LEC, evidence of substantial harm, an I-192 waiver application, and filing receipts for the I-918 and I-192, is attached to this motion as Exhibit E. As stated in the LEC, signed by the Tucson City Prosecutor, Respondent was the victim of the qualifying crime of Domestic Violence-Assault that occurred in the U.S., she was helpful in the investigation of the crime by providing information to the investigating officers, and she was prepared to testify in court if asked to do so. See Exhibit D. The LEC also states that she was injured when the perpetrator grabbed her by the neck and pushed her against the wall. The police observed and photographed various injuries she sustained in the assault, including bruises on her eye and lip and scratches on her neck. *Id.* In her personal statement in

support of her U visa petition, Respondent described multiple incidents of emotional and physical abuse she suffered as the victim of domestic violence over a period of almost eight years, and the debilitating emotional effects of the abuse. See Exhibit E-sub 1. She also submitted police reports, an Order of Protection, and a letter from her therapist, who diagnosed her with Reaction to severe stress, Adjustment disorder, and Anxiety disorder-unspecified, all resulting from the abusive relationship with her ex-boyfriend. See Exhibit E-sub 2.

16. Respondent has applied for a waiver of inadmissibility for misrepresentation. She has submitted Form I-192 with supporting evidence, and her waiver application is *prima facie* approvable under the public or national interest standard of INA § 212(d)(14).

17. The attached evidence demonstrates that Respondent has filed a *prima facie* approvable U visa petition, and is therefore presumed, as stated by the Board in *Sanchez-Sosa*, to warrant a favorable exercise of discretion for a continuance for a reasonable period of time. *Sanchez-Sosa*. at 815.

18. **(3) The reason for the continuance and other procedural factors.** Respondent seeks either a continuance or administrative closure so that she can avail herself of a benefit for which she is statutorily eligible, and that is intended to provide humanitarian relief to crime victims as well as assist law enforcement. Congress created the U visa in 2000 as part of the Victims of Trafficking and Violence Protection Act (VTVPA). Section 1513 of the VTVPA states the dual statutory purposes of the U visa:

(1) to strengthen the ability of law enforcement agencies to detect, investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens, and other crimes described in INA § 101(a)(15)(U)(iii), and

(2) to offer protection to victims of such offenses in keeping with the humanitarian

*interests of the United States.* This visa will encourage law enforcement officials to *better serve immigrant crime victims* and to prosecute crimes committed against aliens.

Pub. L. 106-386, 114 Stat. 1464 (Oct 28, 2000) [VTVPA] (emphasis added). A copy of VTVPA § 1513, with the relevant language highlighted, is attached as Exhibit F.

19. Requiring Respondent to proceed to a Voluntary Departure hearing, that would result in her being ordered to leave the U.S. pursuant to either Voluntary Departure or a removal order, would seriously prejudice her pending U visa petition. Leaving the U.S. subject to Voluntary Departure would trigger unlawful presence bars under INA § 212(a)(9), for which she would then have to seek additional waivers in order to be granted a U visa. A removal order would subject her to other, more serious, grounds of inadmissibility for which she would have to seek additional waivers. In addition to prejudicing her U visa petition, being required to leave the U.S. would impose the stress of displacement and economic hardship on a crime victim who has already suffered substantial harm from eight years of domestic violence. It would also deprive her of access to continued psychological therapy that she needs and that she receives at no charge in Tucson through Jewish Family and Children's Services (JFCS). Denying the requested continuance and requiring Respondent to proceed to a Voluntary Departure hearing would be contrary to Congressional intent and would prejudice her U visa petition and thereby undermine the humanitarian purpose of the U visa statute.

20. Respondent has shown due diligence in filing her U visa petition. She obtained a U visa certification and filed her U visa petition within ten months of the date she was served with a Notice to Appear. USCIS' delay in adjudicating her U visa petition is not her fault and is beyond her control. As stated by the Board in *Sanchez-Sosa*, "If the alien shows that he has filed a



completed [U visa] application before the USCIS, including the LEC, and the petition appears to meet the necessary criteria to be granted, then any delay not attributable to the alien “augurs in favor of a continuance.” *Id.*, at 814, citing *Matter of Hashmi*, 24 I&N Dec. 785, 793 (BIA 2009). Furthermore, “Delays in the USCIS approval process are no reason to deny an otherwise reasonable continuance request.” *Id.*, at 814, citing *Malilia v. Holder*, 632 F.3d 598, 606 (9<sup>th</sup> Cir. 2011).

21. On July 31, 2017, Chief Immigration Judge MaryBeth Keller issued a Guidance Memorandum to Immigration Court Judges and staff concerning continuances. US DOJ EOIR Operating Procedures Memorandum 17-01: Continuances, July 31, 2017, available online at <https://www.justice.gov/eoir/file/oppm17-01/download> (Keller Memorandum), that states, on page 3:

[T]he availability of continuances is primarily governed by 8 C.F.R. § 1003.29, which provides that an "immigration judge may grant a motion for continuance for good cause shown." In certain circumstances, *case law further refines the regulatory definition of good cause and informs consideration of specific types of continuance requests, including requests to obtain additional evidence and requests to continue proceedings to await adjudication by U.S. Citizenship and Immigration Services (USCIS) of a relevant petition.*

Keller Memorandum at 3 (emphasis added). A copy of the Keller Memorandum is attached as Exhibit G. The Board's decision in *Sanchez-Sosa* is case law that refines the regulatory definition of good cause and informs the Immigration Judge's consideration of requests to continue proceedings to await USCIS adjudication of U visa petitions. By demonstrating that she has filed a *prima facie* approvable U visa petition, Respondent has shown good cause under *Sanchez-Sosa*, and granting the requested continuance is consistent with the Keller Memorandum as well as *Sanchez-Sosa*.

22. Respondent recognizes that USCIS processing time for U visa petitions has slowed considerably over the last few years, and that Respondent would require additional continuances pending final USCIS adjudication of her U visa petition. As the Keller Memorandum recognizes, multiple continuances strain the Court's resources. They likewise burden DHS, Respondent and Respondent's counsel. As an alternative to a continuance, we therefore ask the Court to administratively close these proceedings. If appropriate under the circumstances, the Immigration Judge or the Board of Immigration Appeals may administratively close proceedings, even over the objection of one of the parties. *Matter of Avetsiyan*, 25 I&N Dec. 688 (BIA 2012).

23. In *Avetsiyan*, the Board stated that the Immigration Judge should weigh all relevant factors to determine whether administrative closure is appropriate, including but not limited to:

- (1) the reason for seeking administrative closure
- (2) the basis for any opposition
- (3) the likelihood of respondent's success on the merits of relief outside the proceedings
- (4) the anticipated duration of the closure
- (5) the responsibility of either party in contributing to any delays
- (6) the ultimate outcome of removal proceedings after recalendaring

*Avetsiyan* at 696. The first three factors are very similar to the factors cited in *Sanchez-Sosa* to determine whether to grant continuances pending U visa adjudication, and Respondent has demonstrated that those factors weigh in favor of granting her a continuance. The same factors likewise favor administrative closure. With respect to factors (4) and (5), as explained in paragraph 20, *supra*, Respondent exercised diligence in filing her U visa petition and she is not responsible for USCIS delay in adjudication of her petition, so the length of the delay should

not be held against her. With respect to factor (6), given the strength of Respondent's U visa petition, the likely outcome of the proceedings is termination. Although the Immigration Judge may consider other relevant factors in determining whether administrative closure is appropriate, consideration of the six factors the Board specifically identified in *Avetsiyan* all favor administrative closure.

24. A September 25, 2009 Guidance Memorandum to OPLA Attorneys from ICE Principal Legal Advisor Peter Vincent (Vincent Memorandum), also favors administrative closure in cases where the Respondent provides proof of having filed a U visa petition and USCIS has determined that the Respondent has made a *prima facie* case. [https://www.ice.gov/doclib/foia/dro\\_policy\\_memos/vincent\\_memo.pdf](https://www.ice.gov/doclib/foia/dro_policy_memos/vincent_memo.pdf). In relevant part, the memorandum states:

If an alien in removal proceedings states that he or she has filed a U visa petition with USCIS, and provides proof of such filing, the OCC shall request a continuance to allow USCIS to make a *prima facie* determination. Once USCIS has determined that the alien has made a *prima facie* case, the OCC should consider administratively closing the case or seek to terminate proceedings pending final adjudication of the petition.

A copy of the Vincent Memorandum is attached as Exhibit H. Respondent's counsel recently asked DHS counsel to request a *prima facie* determination from USCIS regarding Respondent's U visa petition, but DHS has not yet responded. At the annual conference of the American Immigration Lawyers Association (AILA), representatives from DHS ICE ERO and ICE OCC affirmed that the Vincent Memorandum is still in effect. Local DHS counsel's opposition to the requested continuance is contrary to ICE policy as stated in the Vincent Memorandum, and should be given little weight in the Immigration Judge's determination of whether to grant Respondent's requested continuance.

### III. CONCLUSION

Respondent's U visa is prima facie approvable and she meets the criteria for a continuance as set forth by the Board of Immigration Appeals in *Matter of Sanchez-Sosa*, 25 I&N Dec. 807 (BIA 2012). She bears no responsibility for the USCIS delay in processing her U visa petition, and delays in USCIS adjudication are not a reason to deny an otherwise reasonable request for continuance. *Id.* at 814. Respondent's case also meets the criteria for administrative closure as set forth by the Board in *Matter of Avetsiyan*, 25 I&N Dec. 688 (BIA 2012), and administrative closure would spare the Court, DHS, Respondent, and her counsel from having to expending scarce resources on future court appearances and continuances. Continuing these proceedings or granting administrative closure pending USCIS adjudication of Respondent's U visa petition is also in keeping with the humanitarian purpose of the U visa, whereas denial of these requests is contrary to the statutory purpose of the U visa.

For all the foregoing reasons, Respondent respectfully requests that the Immigration Judge continue her removal proceedings pending USCIS adjudication of her pending U visa petition. In the alternative, she requests that the Immigration Judge administratively close the proceedings pending USCIS adjudication of her U visa petition.

Respectfully submitted this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

SOUTHERN ARIZONA LEGAL AID, INC.

Signed: \_\_\_\_\_  
Valerie C. Hink  
Attorneys for Respondent

## **LIST OF EXHIBITS**

<b>EXHIBIT TAB</b>	<b>EXHIBIT</b>
A	Copy of USCIS filing receipt for the I-918
B	Unpublished BIA Decision dated 6/29/2017
C	Unpublished BIA Decision dated 7/10/2017
D	Copy of Law Enforcement Certification (Form I-918 Supplement B)
E	Copy of Respondent's U Visa Petition (I-918 and I-192)
E-Sub 1	Copy of Respondent's Personal Statement in Support of U visa Petition
E-Sub 2	Copy of letter from Respondent's Psychologist
F	VTVPA Section 1513
G	US DOJ EOIR Operating Procedures Memorandum 17-01: Continuances, by Chief Immigration Judge MaryBeth Keller, issued July 31, 2017
H	Guidance Memorandum to OPLA Attorneys from ICE Principal Legal Advisor Peter Vincent, issued September 25, 2009

**U. S. DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
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**ORDER OF THE IMMIGRATION JUDGE [PROPOSED]**

Upon consideration of Respondent's Motion to Continue or Administratively Close Removal Proceedings Pending USCIS Adjudication of U Visa Petition , it is HEREBY ORDERED that the moion be  **GRANTED**  **DENIED** because:

- DHS does not oppose the motion.
- The respondent 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 by \_\_\_\_\_.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Thomas J. O'Leary  
Immigration Judge

**Certificate of Service**

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

Date: \_\_\_\_\_ By: Court Staff \_\_\_\_\_

**U. S. DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
TUCSON, ARIZONA**

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**File No.: A 000 000 000**

**CERTIFICATE OF SERVICE**

**PROOF OF SERVICE OF:**

One copy of Respondent's Motion to Continue or Administratively Close Removal Proceedings Pending USCIS Adjudication of U Visa Petition

**DATE OF SERVICE:** August 9, 2017

I, Valerie C. Hink, Attorney at Law for Southern Arizona Legal Aid, Inc., state that on the date indicated above I served the above-entitled document upon the DHS ICE Office of Chief Counsel by delivering a copy in person to the DHS ICE office at 6431 S. Country Club Road, Tucson, Arizona 85706-5904.

I state under penalty of perjury that the foregoing is true and correct. (Authority: 28 U.S.C. Section 1746.)

Executed on: \_\_\_\_\_

Signed: \_\_\_\_\_

Valerie C. Hink  
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