

March 25, 2022

VIA E-Service:

Office of the Principal Legal Advisor, New York City
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
26 Federal Plaza, Room 1130
New York, New York 10278

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Civil Practice

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Re: [REDACTED]
File No.: A [REDACTED]

Request to Exercise Prosecutorial Discretion and Join a Motion to Administratively Close Proceedings Based on a Pending U Nonimmigrant Visa Petition

Next Master Calendar Hearing Scheduled for April 5, 2022 at 9:00 a.m

Dear DHS Counsel:

The Legal Aid Society represents [REDACTED] (hereinafter Ms. [REDACTED]) a victim of domestic violence in her removal proceedings. Ms. [REDACTED] is scheduled for a Master Calendar hearing on April 5, 2022 at 9:00 a.m.

We respectfully request that your office exercise prosecutorial discretion to join in a motion to administratively close Ms. [REDACTED]'s removal proceedings based on her pending application for U nonimmigrant status. In the alternative, we request that your office consent to the placement of her case on the status docket or a lengthy continuance.

Pursuant to the guidelines set forth in the relevant Department of Homeland Security ("DHS") Mayorkas Memo and the 2011 Morton Memo entitled "Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs," Ms. [REDACTED] warrants a positive exercise of discretion.¹ Ms. [REDACTED] is *prima facie* eligible for U nonimmigrant status as a victim of qualifying crimes of domestic violence that occurred in New York City. She suffered substantial harm as a result of these crimes and was helpful to the New York Police Department's (NYPD) investigation of these incidents of abuse.

Ms. [REDACTED] has never been arrested and her only ground of inadmissibility is her entry to the U.S. without inspection. Ms. [REDACTED] does not pose a threat to national security, border security, or public safety and thus does not constitute an enforcement priority. She is single mother of three minor

¹ Alejandro N. Mayorkas, Secretary of Department of Homeland Security, "Guidelines for the Enforcement of Civil Immigration Law," (Sept. 30, 2021) (the "Mayorkas Memo"); John Morton, Director, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security, "Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs" (June 17, 2011) (the "Morton Memo").

U.S. citizen children. Lastly, she has resided in the U.S. for over 17 years since July of 2004, and fears harm upon return to Ecuador.

Wherefore, we respectfully request that your office exercise prosecutorial discretion to join in a motion for administrative closure of Ms. [REDACTED]'s removal proceedings pending the adjudication of her U application.

In support of our request, enclosed please find the following documents:

- Tab A:** Form I-918 Receipt Notice for Petition for U nonimmigrant status
Form I-192 Receipt Notice, Waiver of Inadmissibility
- Tab B:** Form I-918 Supplement B ("U certification") issued by NYPD for qualifying crimes of domestic violence
- Tab C:** Affidavit of [REDACTED] in support of her Form I-918 Application for U Nonimmigrant Status

DHS Should Exercise Prosecutorial Discretion to Join in a Motion to Administratively Close Proceedings, or in the Alternative Placement on the Status Docket or a Lengthy Continuance

Ms. [REDACTED] suffered serious domestic violence at the hands of her spouse, [REDACTED], with whom she has two U.S. citizen children in common. They knew each since they were fifteen years old, having lived in the same town in Ecuador. Ms. [REDACTED] came to the U.S. in July 2004 to join Mr. [REDACTED], and they married soon after. During their relationship, he subjected her to physical, verbal, and psychological abuse, and continued to harass and threaten her even after they separated. Ms. [REDACTED] reported his abuse to the New York Police Department on multiple occasions between 2010 and 2016. The most serious incident involved Mr. [REDACTED] punching Ms. [REDACTED] in the stomach and face causing her to suffer swelling and bruising to her right eye and a bloody lip. *See* Tabs C (Affidavit of [REDACTED] in support of her Form I-918 Application for U Nonimmigrant Status).

Ms. [REDACTED] was referred to the Legal Aid Society in November 2016. The NYPD issued Ms. [REDACTED] a Form I-918 Supplement B ("U certification") in September 2017, attesting that she was the victim of qualifying crimes of domestic violence and helpful to their investigation. Ms. [REDACTED] diligently filed her application for U nonimmigrant status and accompanying waiver of inadmissibility on November 9, 2017, which remains pending. *See* Tab A (Receipt Notices for I-918 and I-192); Tab B (Form I-918 Supplement B U certification).

USCIS has not published current processing times frames for either U visa adjudications or the newly implemented bona fide determinations. However, based on our experience, USCIS is currently issuing bona fide/wait list determinations for cases filed around April 2017, and final adjudications for

applications filed around April 2017. Ms. ██████ filed her application for U nonimmigrant status in November 2017. We expect that USCIS will determine if a bona fide determination is warranted in her case by or around November 2022, and if so a grant of U nonimmigrant status by or around November 2023.

For the above reasons and in the interest of judicial efficiency, we believe administrative closure, or in the alternative placement on the status docket, is appropriate in Ms. ██████'s case. Administrative closure is a procedural tool created for the convenience of the Immigration Courts and the Board of Immigration Appeals. *Matter of Gutierrez*, 21 I&N Dec. 479, 480 (BIA 1996). This tool is to regulate proceedings, that is, to manage an Immigration Judge's calendar (or the Board's docket). *Matter of W-Y-U-*, 27 I&N Dec. 17, 18 (BIA 2017); *see also Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012) at 694. A case may be administratively closed to allow an event that is relevant to the immigration proceedings but is outside the control of the parties to occur, even if the event does not take place for many years. *Matter of Avetisyan*, 25 I&N Dec. at 692.

When evaluating a request for administrative closure, it is appropriate for an Immigration Judge or the Board to weigh all relevant factors presented in the case, including but not limited to: (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 proceeding (for example, termination of the proceedings or entry of a removal order) when the case is re-calendared before the Immigration Judge or the appeal is reinstated before the Board. *Id.* at 696.

Applying the *Avetisyan* factors to this case establishes that administrative closure is appropriate. Ms. ██████ is prima facie eligible for U nonimmigrant status and USCIS retains sole jurisdiction to adjudicate her application. Ms. ██████'s U application has been pending over 4 years since November 2017. As noted above, we expect that USCIS will determine if a bona fide determination is warranted by or around November 2022, and if so will grant U nonimmigrant status by or around November 2023. At that point, Ms. ██████ would no longer be removable.

As an alternative it would similarly be appropriate to place Ms. ██████'s case on the status docket. USCIS has sole jurisdiction over Ms. ██████'s U application which will remain pending another 7-8 months or longer before a bona fide determination is issued. The status docket is designed exactly for this purpose: to allow a visa petition to be adjudicated, a visa number to become available, or an action to be taken by another agency. Placing Ms. ██████'s case on the status docket will both provide an opportunity for her to obtain qualifying relief and permit the court to dispense with a matter not yet ripe for adjudication, thus creating additional space for the hearing of cases suitable for final decisions on the merits.

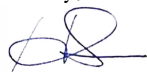
Lastly, at a minimum, Ms. ██████'s case warrants a lengthy continuance to allow USCIS the

opportunity to adjudicate her collateral U application. *Matter of Sanchez Sosa*, 25 I&N Dec. 807, 812-13 (BIA 2012); *Matter of L-A-B-R-*, 27 I&N Dec. 405, 419 (A.G. 2018). Specifically, *Matter of Sanchez Sosa* provides a rebuttable presumption that a continuance should be granted if the respondent is prima facie eligible for a U visa, and an Immigration Judge must evaluate whether there is good cause for a continuance based on the totality of the circumstances. In line with both *Matter of Sanchez Sosa* and *Matter of L-A-B-R-*, Ms. [REDACTED] has demonstrated “good cause” for a continuance to accommodate her collateral U application. She is clearly prima facie eligible for U nonimmigrant status, and diligently applied for U nonimmigrant status in November 2017 after her last report to the NYPD in 2016. If granted U nonimmigrant status, Ms. [REDACTED] will no longer be removable thereby materially affecting the outcome of this proceeding. *Id.* These factors combined establish that a continuance is both appropriate and required. *See Matter of Mayen*, 27 I&N Dec. 755 (BIA 2020); *Matter of Sanchez Sosa*, 25 I&N Dec. 807 (BIA 2012).

In conclusion, Ms. [REDACTED] warrants a favorable exercise of discretion. She does not fall within any of the categories ICE enforcement priorities. She has never been arrested in or outside the U.S., and her only ground of inadmissibility is for being present in the U.S. without inspection or admission. The fact that she is a victim of domestic violence and crime victim is a primary factor warranting a favorable exercise of discretion. Other significant factors include the length of time Ms. [REDACTED] has resided in the U.S. (17 years) and maintaining family unity as she is a single mother of three minor U.S. citizen children. Lastly Ms. [REDACTED] fears harm upon return to Ecuador for the reasons outlined in her asylum application, and because her abuser Mr. [REDACTED] is also from the same town in Ecuador and could harm her there with impunity.

Based on the foregoing, we are herein respectfully requesting that your office join in a motion to administratively close Ms. [REDACTED]'s removal proceedings. Thank you for your time and attention to this request. If you have any questions or require any further information, please do not hesitate to contact me at [REDACTED]

Sincerely,



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