



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041

Clancy, Thomas P  
Munger, Tolles & Olson LLP  
350 South Grand Avenue  
Suite 5000  
Los Angeles, CA 90071

DHS/ICE Office of Chief Counsel - LOS  
606 S. Olive Street, 8th Floor  
Los Angeles, CA 90014

Name: N [REDACTED] M [REDACTED], O [REDACTED] S [REDACTED] A [REDACTED]-633

Date of this notice: 7/10/2017

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Cynthia L. Crosby  
Deputy Chief Clerk

Enclosure

Panel Members:  
Kendall Clark, Molly  
Neal, David L  
Adkins-Blanch, Charles K.

U.S. Department of Justice  
User team: Docket

For more unpublished BIA decisions, visit  
[www.irac.net/unpublished/index/](http://www.irac.net/unpublished/index/)

Falls Church, Virginia 22041

---

File: A [REDACTED] 633 – Los Angeles, CA

Date:

**JUL 10 2017**

In re: O [REDACTED] S [REDACTED] N [REDACTED] M [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Thomas P. Clancy, Esquire

ON BEHALF OF DHS: Nicholle Hempel  
Assistant Chief Counsel

APPLICATION: Termination

The Department of Homeland Security (DHS) has appealed the Immigration Judge's January 19, 2017, decision granting the respondent's motion to terminate proceedings. The DHS's appeal will be sustained, the proceedings will be reinstated, and the matter will be administratively closed.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including whether the parties have met their relevant burden of proof, and issues of discretion, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent is a native and citizen of Guatemala who entered the United States without authorization on or about August 15, 2015, when he was 16 years old. The respondent was designated as an Unaccompanied Alien Child (UAC). The Immigration Judge terminated the respondent's removal proceedings because he is the beneficiary of an approved petition for Special Immigrant Juvenile (SIJ) status (Form I-360) (IJ at 2-3; Respondent's Motion to Terminate, Tab A). The Immigration Judge reasoned that it was in the interest of justice and judicial economy to terminate proceedings to allow the respondent to file his application for adjustment of status (Form I-485) with the United States Citizenship and Immigration Services (IJ at 2-3).

However, the Immigration Judge erred in terminating proceedings because the priority date for the respondent's petition is not yet current, and thus, the respondent cannot adjust his status at this time. Thus, the respondent remains removable from the United States as alleged in the Notice to Appear and is not currently eligible for relief from removal. Accordingly, we will sustain the DHS's appeal and reinstate the respondent's removal proceedings.

While we conclude that termination in this case is inappropriate, administrative closure is warranted. According to the guidance provided to Immigration Judges by the Chief Immigration Judge, "administrative closure might be warranted" in cases where an unaccompanied child is seeking Special Immigrant Juvenile status, as the process can be lengthy. *See* Memorandum from Brian M. O'Leary, Chief Immigration Judge, to Immigration Judges (March 24, 2015)

("Docketing Practices Relating to Unaccompanied Children Cases and Adults with Children Released on Alternatives to Detention Cases in Light of New Priorities"). In view of the respondent's approved SIJ petition, and the totality of the circumstances presented, the respondent's removal proceedings will be administratively closed. *See Matter of Avetisyan*, 25 I&N Dec. 688, 696 (BIA 2012).

If either party to this case wishes to reinstate the proceedings, a written request to reinstate the proceedings may be made to the Board. The Board will take no further action in the case unless a request is received from one of the parties. The request must be submitted directly to the Clerk's Office, without fee, but with certification of service on the opposing party. Accordingly, the following orders will be entered.

ORDER: The DHS's appeal is sustained and the removal proceedings against the respondent are reinstated.

FURTHER ORDER: The proceedings before the Board of Immigration Appeals in this case is administratively closed.

  
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
LOS ANGELES, CALIFORNIA

FILE NUMBER: [REDACTED]

IN THE MATTERS OF:

N [REDACTED] M [REDACTED], O [REDACTED]

RESPONDENTS

)  
)  
)  
)  
)  
)

IN REMOVAL PROCEEDINGS

APPLICATION: Motion to Terminate Proceedings

**ON BEHALF OF RESPONDENT:**

**ON BEHALF OF THE GOVERNMENT:**

Assistant Chief Counsel  
U.S. Department of Homeland Security  
606 South Olive Street, Eighth Floor  
Los Angeles, California 90014

**DECISION AND ORDERS OF THE IMMIGRATION JUDGE**

Before the Court is a Motion to Terminate Proceedings (Motion) filed by Respondent. In the Motion, the Respondent moves the Court to terminate these proceedings without prejudice so that Respondent may have United States Citizenship and Immigration Services (USCIS) accept the application for adjustment of status for adjudication. The Government opposes the motion as a matter of policy. Having considered the arguments and evidence of record, the Court finds good cause to **GRANT** the Motion.

**I. STATEMENT OF THE CASE**

The Department of Homeland Security (DHS) commenced these removal proceedings against the Respondents pursuant to its authority under section 240 of the Immigration and Nationality Act (INA).<sup>1</sup> DHS commenced these proceedings by issuing Respondent a Notice to Appear (NTA), and filing it with the Immigration Court.

The Respondent seeks relief from removal in the form of adjustment of status under section 245(a) of the INA. The basis for the Respondents' adjustment application is special immigrant juvenile status (SIJS) petitions (Form I-360), which has already been filed with and approved by USCIS.

<sup>1</sup> The Government encountered the Respondents when they arrived in the United States as Unaccompanied Alien Children (UAC).

In the instant Motion, the Respondent moves the Court to terminate the instant proceedings without prejudice so that the adjustment application (Form I-485) may be filed with USCIS. DHS opposes any motion to terminate or administratively close these proceedings as a matter of policy, but has no objection to a continuance until the priority date for the visa is current for the motion to terminate to be granted.

## **II. ANALYSIS AND FINDINGS OF THE COURT**

USCIS adjudicates SIJS petitions, which are filed on Form I-360. In adjudicating such petitions, USCIS must determine whether the petitioner qualifies as a “special immigrant juvenile,” which requires that the petitioner be: (1) present in the U.S.; (2) under 21 years of age; (3) declared dependent upon a juvenile court in the U.S., or legally committed to or placed under the custody of an agency or department of a State, or an individual or entity appointed by a State or juvenile court; (4) the subject of a determination that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis under State law; and, (5) the subject of a determination in administrative or judicial proceedings that returning to his or her country of nationality or last habitual residence is not in his or her best interest. See INA § 101(a)(27)(J).

Once USCIS approves a petitioner’s Form I-360, she is eligible for an EB-4 visa, which allows the petitioner to adjust her status to that of a lawful permanent resident. However, EB-4 visas are subject to availability. See INA § 202(a)(2). According to the most recent Department of State visa bulletin, the priority date for EB-4 visas is not current for petitioners from El Salvador, Guatemala, and Honduras. Once the priority date is current, the respondent may file the adjustment of status application along with the approved I-360 visa petition.

In the instant case, the Respondent has a previously received findings from the Superior Court of the State of California that Respondent is a dependent upon a juvenile court, agency, department, or individual located in the United States, and that returning the Respondent to the country of nationality is not in Respondent’s best interest. See Id. In addition, the visa petition has been approved by USCIS. The only matter remaining is for the visa petition to become current. DHS’s has no objection to a continuance for that purpose but, as a matter of policy, opposes any termination until the visa is current.

Upon the commencement of removal proceedings, the Court has exclusive jurisdiction to consider applications for relief from removal, including adjustment of status. 8 C.F.R. §§ 1240.11, 1245.2(a)(1). However, this Court may not accept an adjustment application (Form I-485) from the Respondent, because the EB-4 visas are not currently available. 8 C.F.R. § 1245.1(a). Thus, until the Respondent, who has been deemed eligible for special juvenile immigrant status, can file the adjustment application with the Court, Respondent will denied benefits to which they are entitled, including employment authorization. See 8 C.F.R. § 274a.12(c)(9). Nor may USCIS accept an adjustment application from the Respondent while these removal proceedings are pending. See 8 C.F.R. § 1245.2(a)(1).

The Court has carefully considered the record as a whole. The Respondent arrived in the

United States as unaccompanied child and has been deemed to qualify for special immigrant juvenile status by the State court. The Court finds it in the Respondent's best interest to permit Respondent to pursue the adjustment application with USCIS, which the agency is willing to accept at this point in time.

Further, it is uncertain when the Respondent's visa may become available. Therefore, keeping the Respondent's cases on the calendar will more likely than not result in continuances and/or motions to advance further exacerbating the Court's already crowded docket. Such circumstances impede the Court's ability to achieve the efficient administration of justice while maintaining fairness in the course of resolving disputes. The Court must focus resources on matters ripe for resolution. Thus, the Court finds good cause to grant the Respondent's requests to terminate these proceedings.

Finally, the Government is not prejudiced by the termination of these proceedings, as the Court will enter the order of termination without prejudice. Therefore, the Government is free to institute removal proceedings against the Respondent in the future if Respondent is not successful with the adjudication of the adjustment applications.

Based on the foregoing, the Court finds the Respondent has established good cause to terminate the instant proceedings. Thus, in the exercise of its discretion, the Court will **GRANT** the Respondent's Motion, and enter the following Orders:

### ORDERS

**IT IS HEREBY ORDERED** that the Motion to Terminate Proceedings filed by the Respondent be **GRANTED**.

**IT IS FURTHER ORDERED** that these proceedings are hereby **TERMINATED WITHOUT PREJUDICE**.

DATED: 1/19/2017

  
A. ASHLEY TABADDOR  
IMMIGRATION JUDGE

CERTIFICATE OF SERVICE	
THIS DOCUMENT WAS SERVED BY:	
<input checked="" type="checkbox"/> MAIL (M)	<input checked="" type="checkbox"/> PERSONAL SERVICE (P)
TO: <input type="checkbox"/> ALIEN <input type="checkbox"/> ALIEN c/o Custodial Officer	
<input checked="" type="checkbox"/> ALIEN'S ATT/REP <input checked="" type="checkbox"/> DHS	
DATE: <u>1/19/17</u> BY: COURT STAFF <u>[Signature]</u>	
Attachments: <input type="checkbox"/> EOIR-33 <input type="checkbox"/> EOIR-28	
<input type="checkbox"/> Legal Services List <input type="checkbox"/> Other	