



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Falls Church, Virginia 20530

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**606 S. Olive Street, 8th Floor**  
**Los Angeles, CA 90014**

**Name: FURUI, SUMIKO**

**A 095-723-429**

**Date of this notice: 6/24/2015**

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

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Guendelsberger, John

OPTION

Userteam: Docket

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5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 20530

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Department of Homeland Security  
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606 S. Olive Street, 8th Floor  
Los Angeles, CA 90014**

**Name: FURUI, SUMIKO**

**A 095-723-429**

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Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Guendelsberger, John

Rayford  
Userteam: Upward

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**U.S. Department of Justice**  
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 20530

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File: A095 723 429 -- Los Angeles, CA

Date: JUN 24 2015

In re: SUMIKO FURUI

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Ricardo E. Viscarra, Esquire

APPLICATION: Administrative closure

During the pendency of the respondent's timely appeal from the Immigration Judge's decision dated May 30, 2014, counsel for the respondent has filed a motion for administrative closure. The motion states that the Department of Homeland Security (DHS) has agreed to administrative closure. Attached to the motion is an e-mail from DHS stating that it consents to administrative closure, where the respondent submitted a written request for the exercise of prosecutorial discretion by DHS in his case.<sup>1</sup> In light of our decision in *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012), and lack of opposition from DHS, we will administratively close the proceedings. See 8 C.F.R. § 1003.2(g)(3).

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 order will be entered.

**ORDER:** The proceedings before the Board of Immigration Appeals are administratively closed.

  
\_\_\_\_\_  
FOR THE BOARD

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<sup>1</sup> A courtesy copy of this decision will be mailed to Linda G. Ronan, Assistant Chief Counsel, the DHS attorney named in the e-mail.

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

File: A095-723-429

May 30, 2014

In the Matter of

SUMIKO FURUI

RESPONDENT

)  
)IN REMANDED REMOVAL PROCEEDINGS  
)  
)

CHARGE: 237(a)(1)(B)

APPLICATIONS: Motions to administratively close; motion for continuance.

ON BEHALF OF RESPONDENT: Ricardo Viscara  
3055 Wilshire Boulevard, Suite 420  
Los Angeles, California 90010

ON BEHALF OF DHS: Prashanthi Rangan

ORAL DECISION OF THE IMMIGRATION JUDGE

This matter originated with another immigration judge, no longer on the bench in Los Angeles. Under his management of this case, the NTA was marked into the record as Exhibit 1, and re-marked by this court as Exhibit 1. The former immigration judge took oral pleadings, and the respondent admitted all five allegations, and conceded removability. Removability has been established by clear and convincing evidence.

There was a change of venue request to the Los Angeles court, and in Exhibits 2 and 3, venue was changed to the Los Angeles court, which brought jurisdiction to that judge.

The court then basically received a series of documents from counsel, after he received the NTA, in 2007, and those labor certification documents were collectively marked into the record as Collective Exhibit 4, 5, 6, 7, 8, by this court. No documents were marked into the record, except the NTA, by the prior judge.

In 2011, the judge made certain decisions, and the transcript and his summary of the decision are Collective Exhibit 9. Basically, the judge did not, according to the BIA -- that will be discussed in a moment -- did not make a formal decision, which is required. This court is certainly familiar with Board instructions that are precedent decisions that require immigration judges to make a separate decision from the transcripts. This court believes that, in 2011, the prior judge made a ministerial error. Nonetheless, it ultimately brought this case back to this docket, in Los Angeles, at Exhibit 10. Thereafter, the case was routinely reassigned to this court, in 2013, and the respondent was given basically a year to have the collateral relief resolved. As it turns out, the timing was accurate. Basically, the respondent submitted Collective Exhibits 11 and 12. As will be discussed infra [phonetic], the appellate process ended just 13 days before this court reset the case until today.

#### RELIEF

##### 1) Prosecutorial Discretion

The current climate in the immigration court setting today is filled with cases being granted prosecutorial discretion. DHS did not offer prosecutorial discretion in this case. Therefore, the motion for admin close under prosecutorial discretion must be denied.

## 2) Interim Decision 3135

Before prosecutorial discretion, this court had authority to administratively close any case where there was agreement between the parties. Interim Decision 3135 is the basis for such a conclusion. In this case, although counsel for respondent wanted an agreement, Homeland Security disagreed. They did not agree to admin close these proceedings, and therefore opposed this particular admin close. Without agreement, the respondent cannot get admin close under Interim Decision 3135. Therefore, this request was also denied.

## 3) Matter of Avetisyn, Interim Decision 3740

The respondent has pointed to the Board remand, suggesting an Avetisyn analysis. This court certainly recognized the Board's suggestion, and had a full hearing on the Avetisyn approach. To begin with, the Avetisyn approach has six significant factors to consider. One of those factors is whether or not there is any opposition to an admin close. In this case, the Department of Homeland Security does oppose an admin close.

The court is also mindful of the thrust of the Avetisyn approach. Basically, it suggests that judges, as a matter of discretion, can close certain cases, under appropriate facts. One of the reasons for admin close under the Avetisyn approach is future potential immigration benefits that may not be readily available to a respondent, but could be, in the future. For example, where quota numbers are backlogged, and respondents are 245-I eligible, that would be a prime example of how the Avetisyn approach would work. Unfortunately for this respondent, although she is 245-I eligible, she does not have a current quota number, or, for that matter, approved immigrant visa

petition. Rather, the ROP is complete, that the Department of Homeland Security, at the CIS district level, and on the appellate level, denied the respondent's I-140 immigrant petition. The respondent also filed a motion to reopen that also was denied at Exhibit 12. In that, the appellate body pointed out that looking back at the totality of the period for the respondent, that the employer could not sustain that they had the ability to pay the respondent for the entire period, and that was the gravement [phonetic] of the denial. Regardless, in the final analysis, the respondent does not have a petitionable approval, and therefore, does not have a means to immigrate.

Clearly, employment-based petitions are not the only way to immigrate. The respondent, however, does not have a family that can petition for her. Her parents are neither lawful permanent residents or U.S. citizens. She has a younger brother, but he is in Japan, and he is neither a lawful permanent resident or a U.S. citizen. The respondent is married, and has been for 20 years, but he is in Japan, and he does not have residency or U.S. citizenship. The respondent does not have children. In the final analysis, the respondent does not have an alternative to immigrate under the family petitions.

Additionally, we must look to factors such as anticipated duration of the closure, and likelihood of success. Basically, counsel is asking for an open-ended period to close this case, and this court does not believe that that is a strong factor for the respondent. Actually, it is asking the court to do something indirectly, what it should not probably be adjudicating. Homeland Security brought these proceedings, and Homeland Security does have a voice in the final analysis about removal. They have established their position clearly on the record. Furthermore, in light of the motion to reopen denial, and the reasons, this court does not have sufficient evidence to show a likelihood of success in the future. That being said, however, the court recognizes that

that would not preclude counsel from filing a new labor certification and I-140 that, if approved, would form a new basis for immigrant petition. The respondent would not lose her 245-I eligibility. This form of relief could be handled at a later time, while this case was on appeal. In other words, if the respondent gets all that approved, which is hypothetical at this point, there'd be no reason why the respondent could not ask the Board, and/or this court, to have this case back on its docket to adjudicate fresh relief, if it is approved. Therefore, regardless of the likelihood of success or not, it can be handled alternatively, and that would be more appropriate than what counsel is asking for in this court's final analysis.

The court is also looking to the responsibility of either party in contributing to any delays. Both counsels should not be blamed for the delay. However, it was a ministerial error by a prior judge that has prolonged his case. Neither party should be penalized for that delay, but, nonetheless, that is part of my analysis, and does not tip the scale for an admin close in the final analysis.

Based upon my analysis, and the evidence presented, I do not find that the respondent's case should be administratively closed under Matter of Avetisyn as a matter of discretion.

#### 4) Motion to Continue

I incorporate, by reference, my entire discussion on Matter of Avetisyn herein. A motion for continuance has very similar analysis to a Matter of Avetisyn admin close. The same factors that I used to deny or to analyze the Avetisyn arc, used herein. To continue this case would be tantamount to doing an admin close in the final analysis, and I did not find that appropriate. Therefore, for the same reasons articulated above, I would deny a motion to continue at this time, as a matter of discretion.



The last concept was that the respondent said she was fearful of returning to Japan, but in the final analysis, what she said was, she was fearful of returning to Japan because she's been in the United States 15 years. This is not a basis for asylum, withholding of removal, or Convention Against Torture. She told the court she was not fearful of the government, any groups, any individuals, or her husband. Respondent's counsel also told the prior judge they were not filing for this relief. I do not find any facts that would lead me to believe that there are claims for this form of relief. Furthermore, there are no applications filed by this counsel to underscore my conclusions.

The last concept that I do have is the respondent does not have a work permit. She is working in the United States without permission. This is tantamount to taking a job from a United States citizen. At this time, this is an adverse factor, in this court's opinion.

#### Voluntary Departure

Although the respondent originally applied for voluntary departure before the other judge, in the final analysis, counsel has withdrawn that request based on legal analysis, and reasons salient to the respondent. This court does not interfere with counsel's legal conclusions and/or decisions.

#### ORDERS

It is hereby ordered respondent's motions for admin close, for all reasons, be denied; further ordered respondent's motion for continuance be denied;

Further ordered respondent be ordered removed and deported to Japan on the charges contained in the Notice to Appear.

**Please see the next page for electronic signature**

IRA G. BANK  
Immigration Judge



//s//

Immigration Judge IRA BANK

banki on March 17, 2015 at 3:34 PM GMT

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