



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: SHORE, MICHAEL DAVID**

**A 077-918-741**

**Date of this notice: 12/7/2018**

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:  
Wendtland, Linda S.

Userteam: Docket

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*OSY*

Falls Church, Virginia 22041

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File: A077-918-741 – Miami, FL

Date: DEC - 7 2018

In re: Michael David SHORE

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Edward Cifuentes, Esquire

APPLICATION: Continuance

The respondent, a native and citizen of Canada, appeals from an October 12, 2017, Immigration Judge decision denying his request for a continuance and ordering him removed. We will remand the record for further proceedings.

We review the Immigration Judge's factual findings, including credibility findings and predictions as to the likelihood of future events, for clear error. 8 C.F.R. § 1003.1(d)(3)(i) (2018). We review all other issues de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent entered the United States in or about 1978 as a nonimmigrant visitor on a B2 visa with authorization to remain for a period not to exceed 6 months (IJ at 1; Exh. 1; Tr. at 49). He did not depart the country (Exh. 1). The respondent was placed into proceedings in May 2012 and first appeared before an Immigration Judge in June 2012 (*Id.*; Tr. at 1). The respondent applied for adjustment of status based on his marriage to a United States citizen, but divorced his wife during proceedings and was no longer eligible for adjustment of status (IJ at 2). On September 25, 2017, the respondent moved to continue proceedings in order to await adjudication of a Form I-918, Petition for U Nonimmigrant Status ("U visa"), which motion the Immigration Judge denied (IJ at 2; Respondent's September 25, 2017 Motion).

We will remand the record for further proceedings. An Immigration Judge may grant a continuance for "good cause shown." 8 C.F.R. § 1003.29 (2018). The Immigration Judge granted numerous continuances between June 4, 2012, and October 12, 2017, in order for the respondent's attorney to have preparation time, for the respondent to file his adjustment of status application, and for him to obtain and file relevant supporting documents for that application such as his arrest record that extends from 1980 to 2012 (IJ at 2; Tr. at 1-2, 8, 13, 19-20, 27-28, 40-41, 66, 101-02, 170-71).

On October 12, 2017, the respondent told the Immigration Judge that he was divorced from his wife, and thus no longer eligible for adjustment of status based on the visa petition she filed on his behalf (IJ at 2; Tr. at 174). The respondent also told the Immigration Judge, in support of the motion he had filed on September 25, 2017, that he wanted to pursue a U visa and indicated that police had certified the U visa (Tr. at 174-75). The respondent told the Immigration Judge that the visa application had just been filed, and requested a continuance in order for United States Citizenship and Immigration Services ("USCIS") to adjudicate it (Tr. at 175).

The Immigration Judge denied the motion, stating that there was no matter before him to adjudicate because the U visa was between the respondent and USCIS (IJ at 2). On appeal, the respondent asserts that he warrants a continuance because he demonstrated good cause and has a pending U visa before USCIS. The respondent further contends that the Immigration Judge did not assess all of the relevant factors for a continuance before denying it.

In support of his motion for continuance, the respondent submitted a copy of his completed U visa application to the Immigration Judge, which indicates he mailed the application on October 11, 2017 (Respondent's U visa application at Tabs A-K). The October 11, 2017, mailing date was 1 week after the respondent received a signed certification from law enforcement (*Id.*). On appeal, the respondent submits a document indicating that USCIS received his U visa application on October 17, 2017 (Respondent's Br. at Tab A), but the record does not indicate whether it still is pending or that it has been approved.

The Immigration Judge did not address the factors used in deciding whether to continue a case discussed in *Matter of Sanchez Sosa*, 25 I&N Dec. 807, 812-13 (BIA 2012). During the pendency of the appeal, the Attorney General issued further guidance on factors to consider in adjudicating a motion to continue. See *Matter of L-A-B-R- et al.*, 27 I&N Dec. 405, 406, 413-14, 417-18 (A.G. 2018). On remand, we ask the Immigration Judge to apply in the first instance the factors pertinent to weighing a continuance request pursuant to *Matter of L-A-B-R- et al.*, 27 I&N Dec. at 406, 413-14, 417-18; and *Matter of Sanchez Sosa*, 25 I&N Dec. at 812-13. We make no statement as to the merits of the respondent's request.

Accordingly, the following order will be issued.

ORDER: The record is remanded for further proceedings consistent with this order, and for the issuance of a new decision.

  
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FOR THE BOARD