U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: S[redacted]-S[redacted], S[redacted] W[redacted] **A [redacted]-680**

Date of this notice: 2/26/2018

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:
Grant, Edward R.

Userteam: Docket

File: [redacted] 680– Los Angeles, CA Date: FEB 26 2018

In re: S[redacted] W[redacted] S[redacted]-S[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Lucero Chavez, Esquire

ON BEHALF OF DHS: George Francis
Assistant Chief Counsel

The Department of Homeland Security (DHS) has filed an interlocutory appeal from the Immigration Judge's July 6, 2017, decision administratively closing the respondent's proceedings. Ordinarily the Board does not entertain interlocutory appeals. *See Matter of M-D-*, 24 I&N Dec. 138, 139 (BIA 2007), and cases cited therein. We have on occasion accepted interlocutory appeals to address significant jurisdictional questions about the administration of the immigration laws, or to correct recurring problems in the handling of cases by Immigration Judges. *See, e.g., Matter of Guevara*, 20 I&N Dec. 238 (BIA 1990, 1991); *Matter of Dobere*, 20 I&N Dec. 188 (BIA 1990). The issue of whether the Immigration Judge properly administratively closed the respondent's proceedings does not present a significant jurisdictional question about the administration of the immigration laws. Nor does it involve a recurring problem in Immigration Judges' handling of cases. The question raised in this interlocutory appeal does not fall within the limited ambit of cases where we would exercise our jurisdiction.

Accordingly, the following order will be entered.

ORDER: The record shall be returned to the Immigration Court with no further action.

FOR THE BOARD

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

File No: [redacted]680	)	
	)	
In the Matter of:	)	
	)	
S[redacted] W[redacted] S[redacted]-S[redacted],	)	**IN REMOVAL PROCEEDINGS**
	)	
Respondent	)	

APPLICATION: Motion for Administrative Closure.

ORDER OF THE IMMIGRATION JUDGE

I. Procedural Posture

S[redacted] W[redacted] S[redacted]-S[redacted] (the respondent) is a native and a citizen of Guatemala who has been placed into removal proceedings and charged with being removable pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA). On January 23, 2014, the Department of Homeland Security (the Department) commenced these removal proceedings by the filing of a Notice to Appear (NTA) with the Immigration Court sitting in Los Angeles, California. *See* Exhibit 1 & 8 C.F.R. § 1003.14(a).

On May 9, 2017, the respondent admitted factual allegations one to four of the NTA and conceded the charge. Based on the respondent's admission and concession, the undersigned Immigration Judge found the respondent inadmissible as charged and directed Guatemala as the country for removal.

On March 15, 2017, the respondent filed a "Motion for Administrative Closure" (Motion). In support of the Motion, the respondent filed evidence that the U.S. Citizenship and Immigration Service (CIS) approved on March 6, 2017, a Form I-360 (Petition for Amerasian, Widow(er), or Special Immigrant) (I360 petition) based on the Special Immigrant Juvenile findings of a state court.[1] INA § 101(a)(27)(J).

1. Special Immigrant Juvenile findings by a state court require that the petitioner be placed under the custody of another; that reunification with one or both parents is not viable due to abuse, neglect, abandonment, or a similar basis; and that it is in the best interest of the petitioner not to return to his or her country of nationality or of last habitual residence. *See* Cal. C.C.P. § 155(b)(1) (setting forth the factual findings to be made by California Courts).

II. Basis for the Motion

The basis for the Motion is the pending availability of a SIJ visa. *See* INA § 203(b)(4)(delineating the availability of special immigrant visas and stating that SIJ Visas are such visas, citing INA § 101(a)(27)(J)). Special immigrant visas are categorized as fourth preference employment based (EB4) visas and are subject to availability. *Id.* & INA § 202(a)(2). The current Visa Bulletin from the U.S. Department of State shows that EB4 visas are currently over subscribed for the countries of El Salvador, Guatemala, and Honduras. *See travel.state.gov/content/visas/en/law-and-policy/bulletin.* Once an EB4 visa is available, the respondent will be eligible to adjust status in the United States either before the Immigration Court, or, if these proceedings are terminated at such juncture, before CIS. INA §§ 245(a) & 245(h).

The Department has stated that its policy is to oppose administrative closure in situations such as the respondent's but it does not oppose a continuance to await the availability of an EB4 visa. The Department has not noted any specific opposition based on the respondent's ineligibility for the relief nor has it filed a response to the respondent's Motion.

III. Statement of the Applicable Law

In *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012), the Board of Immigration Appeals (Board) reviewed when it is appropriate for an Immigration Judge to administratively close proceedings over a party's objections. In *Avetisyan,* the Board notes in preliminary observations that administrative closure is a tool for Immigration Judges to use to manage their court calendars for the efficient use of the limited Immigration Court resources. 25 I&N Dec. at 695. The Board notes that the Immigration Judge's authority to regulate the course of removal proceedings provides for the use of such a tool. *Id.* at 692 (citing 8 C.F.R. § 1003.10(b)). The Board explicitly notes that both continuances and administrative closure are tools at the Immigration Judge's disposal. *Id.* The Board notes that continuances may be appropriate to await additional action required of the parties that will be, or is expected to be, completed within a reasonably certain and brief amount of time. *Id.* In contrast, administrative closure may be appropriate to await an action or event that is relevant to immigration proceedings but is outside the control of the parties or the court and may not occur for a significant or undetermined period. *Id.*

In *Avetisyan,* the Board emphatically states that an Immigration Judge may not abdicate his responsibility to exercise independent judgment and discretion by permitting one party's opposition to administrative closure to dictate the Court's actions. *Id.* at 694. To provide guidance, the Board notes it is appropriate to consider all relevant factors presented in a 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; (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. *Id.* at 696.

In *Matter of W-Y-U-*, 27 I&N Dec. 17 (BIA 2017), the Board found that the Immigration

Judge erred in concluding that the matter did not present an actual case in dispute given the respondent's desire to seek asylum. 27 I&N at 18-19. The Board also found that it is irrelevant in consideration of administrative closure whether the matter before the Court is an enforcement priority for the Department, as such is not dispositive of whether the case is in dispute. *Id.* at 19. Finally, the Board clarified its holding in *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012), and held that the primary consideration for an Immigration Judge in determining whether to administratively close or recalendar proceedings is whether the party opposing administrative closure has provided a persuasive reason for the case to proceed and be resolved on the merits. *Id.* at 20.

IV. Analysis & Findings

Although the exact period to await the availability of an EB4 visa is uncertain, resources are available to help predict the timeframe. The Visa Bulletin from the U.S. Department of State sets-forth the priority dates for overprescribed petitions so that an applicant can see when their visa may become available. *See travel.state.gov/content/visas/en/law-and-policy/bulletin.* Although only an estimate, it is important that both the respondent and the Department can thereby stay abreast of the likely wait on the availability of an EB4 visa and learn when the respondent may be eligible for relief.

Given the issuance of a predicate order by the California Superior Court and the approval of the I360 petition, it appears that the respondent is prima facie eligible to adjust status in the United States once an EB4 visa becomes available. Even though the adjustment provisions for special immigrant juveniles are generous, they do not waive all inadmissibility categories. Accordingly, the respondent must still show that he is not inadmissible for turpitudinous offenses, for multiple convictions resulting in confinement of five years or more, or for being involved in the illicit trafficking of a controlled substance. *See* INA §§ 212(a)(2)(A), (2)(B), & (2)(C). Additionally, he must show that he is not inadmissible due to involvement in terrorist activities or on security grounds. *See* INA §§ 212(a)(3)(A), (3)(B), (3)(C), & (3)(E). The Department has not made any allegations that the respondent would be inadmissible based on any of these grounds.

"Unaccompanied Children" (UC) cases are no longer priority cases for the Executive Office for Immigration Review (EOIR). On January 31, 2017, Immigration Judges nationwide were informed that detained respondents would be the priority of the EOIR and the previous prioritization of UC cases was rescinded. *See EOIR OCIJ Memo: Case Processing Priorities* (Jan. 31, 2017) *available at www.lexisnexis.com/legalnews room/immigration.* The only UC cases included in the hierarchy of priority cases are those wherein the minor is in the care of the Office of Refugee Resettlement (ORR) and ORR has not identified a sponsor. Such is not the situation herein.

Those immigration judges handling the former priority UC cases will have to accommodate priority cases in addition to the UC cases on their dockets. Furthermore, due to training and experience, these immigration judges continue to handle UC cases, and can expect to continue to receive large quantities of these cases in the future in spite of the shifting of priorities. Statistics

for the last four fiscal years from the U.S. Customs and Border Patrol show that apprehensions of unaccompanied children for fiscal year 2016 were 59,692, which is second only to fiscal year 2014. *See* "United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016" *available at https://www.cbp/gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016*. Therefore, Immigration Judges handling these dockets will continue to have large numbers of UC cases to balance against the now prioritized detained cases.

Considering the preliminary observations of the Board in *Avetisyan*, in addition to the above factors, the Court notes that the Board expressly noted that Immigration Judges have the responsibility of managing their calendars for the efficient use of limited Immigration Court resources. *Avetisyan*, 25 I&N Dec. at 695. This admonishment and guidance seems now more topical than ever giving the shifting priorities of the Immigration Courts but the continued migration of unaccompanied children to the United States. Furthermore, the Board expressly noted that administrative closure is appropriate when the event or action relevant to immigration proceedings is outside the control of the parties or the court and may not occur for a significant or undetermined period. *Id.* at 692. The availability of an EB4 visa is outside the control of the parties and the court. Furthermore, although there are parameters for knowing an approximate period of visa attendance, the exact period is of significant duration and undetermined. Therefore, it appears these factors weigh in favor of administrative closure.

The six delineated factors established in *Avetisyan* also weigh in favor of administrative closure. The respondent seeks administrative closure as a means to reduce attendance at court hearings. The Court also notes the Department generalized opposition to administrative closure rather than any specific reference to disqualifying factors herein and its past agreement to continuances to await the availability of EB4 visas based on SIJ visa petitions. The Court also notes that moving forward with removal proceedings while viable relief for the respondent is available outside of these proceedings may result in the wasteful use of limited court resources and the strong possibility of having to reopen proceedings later.

The remaining delineated factors weigh in favor of administrative closure. The likelihood of success, as noted above, is strong given the previous findings from the state court and the absence of any negative factors to indicate possible inadmissibility. Although the Court makes no predication as to how it will rule on a future adjustment application, if the respondent seeks to adjust in removal proceedings, the likely outcome of the removal proceedings is to proceed to such an application or to terminate so that the respondent may seek to adjust before CIS. Given the current waiting times for EB4 visa availability, the duration of administrative closure could be about two years, but neither the respondent nor the Department has contributed to delays in this matter. The respondent has shown deliberate speed in identifying relief, filing the request for the predicate order with state court, and filing the I360 petition with CIS. The Department promptly placed the respondent into removal proceedings after the respondent's arrival in the United States and has zealously prosecuted this matter.

The Court also notes that there is no pending relief presently before the Immigration Court.

Both parties have found it in their interest to continue these proceedings so that the respondent may await the availability of an EB4 visa that would permit the respondent to seek adjustment of status either before the Court or before the CIS. Therefore, the Court is not able to find that either party has provided a persuasive reason for the case to proceed to be resolved on the merits at this time. *See Matter of W-Y-U-* 27 I&N Dec. 17, 20 (BIA 2017)(wherein the Board clarified *Avetisyan* by noting that this is the primary consideration for the IJ in deciding whether to administratively close or recalendar a matter).

V. Conclusion

Pursuant to its analysis of the delineated factors in *Avetisyan*, the preliminary observations noted therein, the factors related to docket management, and the Board's recent decision in *Matter of W-Y-U-*, the Court believes administrative closure is the proper action to take in this matter at this time. The Court notes that this action will permit it to use its limited resources for now priority cases. At the same time, the Court will be able to respond adequately through a motion to recalendar, if intervening factors require the Court's attention to this matter before the availability of an EB4 visa or once the respondent is eligible to seek to adjust status. Accordingly, the Court enters the following order.

ORDER

IT IS HEREBY ORDERED that these proceedings be **ADMINISTRATIVELY CLOSED.**

DATE: 07/06/2017

Timothy R. Everett
Immigration Judge

CERTIFICATE OF SERVICE
THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: ( ) ALIEN ( ) ALIEN c/o Custodial Officer (P) ALIEN'S ATT/REP ( ) DHS
DATE: 7/7/17 BY COURT STAFF:
Attachments: ( ) EOIR-33 ( ) EOIR-28 ( ) Legal Services List ( ) Other