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

Maynard, Imelda
Alvarez Bennett Law Firm
3508 NW 50th Street
Oklahoma City, OK 73112

DHS/ICE - Office of Chief Counsel - OKT
4400 SW 44th Street, Suite A
Oklahoma City, OK 73119-2800

Name: BECERRA ESCOBEDO, FERMIN **A 207-114-965**

Date of this notice: 8/5/2016

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:
Mann, Ana
O'Leary, Brian M.
O'Connor, Blair

Userteam: Docket

File: A207 114 965 - Tulsa, Oklahoma

Date: AUG - 5 2016

In re: FERMIN BECERRA ESCOBEDO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Imelda Maynard, Esquire

ON BEHALF OF DHS: Lynn G. Javier
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] - Present without being admitted or paroled

APPLICATION: Continuance, administrative closure

The respondent, a native and citizen of Mexico, appeals from an Immigration Judge's March 22, 2016, decision ordering his removal from the United States. The record will be remanded to the Immigration Judge for further proceedings consistent with this opinion and the entry of a new decision.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, and the likelihood of future events, under the "clearly erroneous" standard. *See* 8 C.F.R. § 1003.1(d)(3)(i); *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015). The Board reviews questions of law, discretion, and judgment and all other issues in an appeal of an Immigration Judge's decision de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent challenges the Immigration Judge's denial of his request for a continuance or to administratively close proceedings pending the adjudication by the United States Citizenship and Immigration Services ("USCIS") of his wife's application for a "U" nonimmigrant visa. Notwithstanding the fact that the USCIS has exclusive jurisdiction over the respondent's spouse's U nonimmigrant visa application, as we explained in *Matter of Sanchez Sosa*, 25 I&N Dec. 807 (BIA 2012), continuances to await the adjudication of a pending U visa application are appropriate under certain circumstances. *See* section 245(m) of the Act; 8 C.F.R. § 245.24(k); *Matter of Sanchez Sosa, supra*, at 810-12 (providing that an alien who has filed a prima facie approvable petition for a U-visa with USCIS will ordinarily warrant a favorable exercise of discretion for a continuance for a reasonable period of time) (citing *Matter of Hashmi*, 24 I&N Dec. 785, 790 (BIA 2009)); 8 C.F.R. § 214.14(c)(1)(ii) (providing for termination of proceedings once an alien's U-visa has been granted). In *Matter of Sanchez Sosa*, *supra*, we identified several salient factors for the Immigration Judge to consider in determining if good cause exists for granting a continuance based on a respondent's potential U visa eligibility, including, but not limited to: (1) the Department of Homeland Security's position with respect to the request, (2) whether the underlying visa petition is

prima facie approvable, and (3) the reason for the continuance request, along with any other relevant procedural factors. *See id.* at 812-13.

We will remand for the Immigration Judge to fully apply the factors we identified in *Matter of Sanchez Sosa, supra*, in determining if good cause exists for granting a continuance in this case based on a respondent's potential U visa eligibility, as a derivative beneficiary of his wife's application. *See* 8 C.F.R, § 214.14(a)(10) (identifying as a qualifying family member the spouse of an alien victim who is eligible for U nonimmigrant status as described in section 101(a)(15)(U) of the Act, 8 U.S.C. § 1101(a)(15)(U)). While the respondent's detention status may be relevant to the determination of whether a continuance is warranted, it is not the exclusive consideration.

We have found "administrative closure is merely an administrative convenience" that "allows the removal of a case from the Immigration Judge's active calendar or the Board's docket" but "does not result in a final order." *See Matter of Lopez-Barrios*, 20 I&N Dec. 203, 204 (BIA 1990). We have also found that administrative closure may be appropriately used "when a future event relevant to immigration proceedings is outside the parties' control and "may not occur for a significant or undetermined period of time." *Matter of Avetisyan*, 25 I&N Dec. 688, 692 (BIA 2012). Therefore, even though the Immigration Judge (I.J. at 3-4) premised his denial of administrative closure, in part, on his contention that he has no jurisdiction over the underlying U visa petition pending before the USCIS, the decision by the USCIS on that application is a future event relevant to these immigration proceedings that is outside the parties' control so as to warrant consideration of administrative closure pursuant to *Matter of Avetisyan*, *supra*, as the regulations provide for termination of removal proceedings once an alien's U-visa application is granted. *See* 8 C.F.R. § 214.14(f)(6) (providing for cancellation of a removal order and termination of removal proceedings after the grant of U visa status). On remand, the Immigration Judge may also apply the standards we identified in *Matter of Avetisyan*, in order to determine the appropriateness of administrative closure in this case. *See id.* at 696.

Consequently, in view of the foregoing, we find it appropriate to remand the record in order to allow the Immigration Judge an opportunity to appropriately consider whether removal proceedings should be continued or administratively closed pending a decision by USCIS on the respondent's spouse's pending U-visa petition. *See Matter of Sanchez-Sosa, supra*, at 812 (providing that an alien who has filed a prima facie approvable petition for a U-visa with the USCIS will ordinarily warrant a favorable exercise of discretion for a continuance); *Matter of Avetisyan*, *supra,* at 696 (discussing the appropriate standards for administratively closing proceedings); *Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009) (setting forth a framework to analyze whether good cause exists to continue proceedings to await adjudication by USCIS of a pending family-based visa petition).

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Court for further proceedings consistent with this opinion and the entry of a new decision.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
DALLAS, TEXAS

File: A207-114-965 March 22, 2016

In the Matter of

FERMIN BECERRA ESCOBEDO	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	

CHARGES: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (Act) as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General.

APPLICATIONS: Request for administrative closure.
Attorney requests for a continuance.

ON BEHALF OF RESPONDENT: IMELDA MAYNARD, Esquire
3508 Northwest 50th Street
Oklahoma City, Oklahoma 73112

ON BEHALF OF DHS: LYNN JAVIER, Esquire
Assistant Chief Counsel
Dallas, Texas

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a native and citizen of Mexico. He entered the United States at or near Laredo, Texas on or about April 3, 2009. At that time, he was not admitted or paroled after inspection by an Immigration Officer. Consequently, the

Department of Homeland Security (here and after referred to as the Government) charged the respondent with removal pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (Act) as amended in that he is an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. Exhibit 1.

On March 8, 2016, respondent did acknowledge receipt of the Notice to Appear. It was placed in the record as Exhibit 1.

Also on March 8, 2016, the respondent via counsel admitted to the factual allegations contained in the Notice to Appear and conceded to the charge of removal. Therefore, removal was established. In case removal became necessary, the respondent designated Mexico.

The respondent requested a continuance in this case to seek relief before the Court.

On March 18, 2016, the respondent filed a motion to administratively close proceedings, in the alternative a request for a continuance. In general the respondent via counsel requested the case to be administratively closed for the respondent to participate in an application for a U-visa. Respondent relies on the Matter of Avetisyan, 25 I&N Dec. 688 (BIA 2012). In other words, the respondent argues that his wife was the victim of a crime i.e. robbery and as such there has been a U-visa filed on her behalf and he will be a derivative of this visa petition.

The Government opposes the respondent's request for administrative closure because the respondent is being detained. The Government also indicated respondent has a conviction for driving while intoxicated. The Court also was made aware the respondent has a pending arrest charge for driving while intoxicated.

After reviewing the Matter of Avetisyan, the Government's opposition, and

respondent's motion for administrative closure, the Court finds the respondent has failed to establish good cause for the case to be administratively close. Principally, the respondent is being detained by the Government at Government's expense. If the respondent's case was administratively closed, that would not affect his detention status. That would only remove the respondent's case from the Court's docket and the respondent would be left with remaining in detention because of his criminal history and because of his illegal entry into the United States. So the Court finds that the respondent's detention status as well as his conviction in 2014 for driving while intoxicated warrants his case being denied as administrative closure. Secondly, the Court does not have jurisdiction over a U-visa and the Court finds that an adjudication of the U-visa before USCIS which the Court has no jurisdiction over and the respondent's detention status would not provide the Court with an accurate timeframe on how long respondent will be detained at Government's expense. So for the above stated reason, the Court finds that administrative closure is not warranted and will deny the respondent's request for administrative closure.

In the alternative the respondent has request a continuance presumably to allow an adjudication of the U-visa. The Immigration and Nationality Act does not contain a specific statutory authority for the adjudication of motions to continue in removal proceedings. Rather, Immigration Judges have broad discretionary authority over motions to continue as stated in 8 C.F.R. Section 1003.29. The Immigration Judge may grant a motion for a continuance for good cause. See also, 8 C.F.R. Section 1240.6 (providing that the Immigration Judge may grant a reasonable adjournment either at his own instance or for good cause shown upon application by the respondent or the Government, in this case the Department of Homeland Security).

Here the respondent seeks a continuance in order to have adjudicated a

U-visa that will be filed on his behalf. This is not relief before the Court. The Court has no jurisdiction over the U-visa. As such, the Court cannot find this would be good cause. In addition, the respondent has a conviction for driving while intoxicated in 2014 and a pending arrest for driving while intoxicated. The Court finds also the respondent's criminal history warrants a continuance being denied in this case. For the above stated reasons, the Court finds the respondent has failed to establish good cause for administrative closure. The Court also notes the respondent is being detained and, therefore, will be detained for an indefinite period of time based on the respondent's motion for a continuance. As such, the Court would deny the respondent's request for a continuance for all of the above stated reasons.

Respondent is seeking no other relief before the Court.

Accordingly, the following order shall entered:

ORDER

IT IS HEREBY ORDERED the respondent's request for administrative closure be denied.

IT IS FURTHER ORDERED the respondent's request for a continuance be denied.

IT IS FURTHER ORDERED the respondent shall be deported from the United States to Mexico based on the charge contained in the Notice to Appear.

Dated this 22nd day of March, 2016.

DEITRICH H. SIMS
Immigration Judge
Dallas, Texas

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE DEITRICH H. SIMS, in the matter of:

FERMIN BECERRA ESCOBEDO

A207-114-965

DALLAS, TEXAS

was held as herein appears, and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

Carol M. Williams

CAROL M. WILLIAMS

DEPOSITION SERVICES, Inc.-2

APRIL 29, 2016

(Completion Date)