

Immigration law frequently changes. This sample document is not legal advice or a substitute for independent research, analysis, and investigation into local practices. This document may be jurisdiction-specific or reflect outdated practices or law. CLINIC does not vouch for the accuracy or substance of this document and it is intended rather for illustration.

ATTORNEY NAME  
ADDRESS  
PHONE #  
EMAIL

NON-DETAINED

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
DENVER, COLORADO

_____	)		
In the Matter of:	)		
	)		
[NAME]	)	File No.:	A #
In removal proceedings	)		
_____	)		

Immigration Judge:

Hearing Date:

---

**RESPONDENT'S MOTION TO CONTINUE TO THE STATUS DOCKET**

---

COMES NOW the Respondent, by and through undersigned counsel, and requests a continuance on the court's status docket. In support of this motion, Respondent states:

1. On June 15, 2018, the Respondent's case was placed on the status docket for June 4, 2019. This court ordered that she provide the status of her I-360 Petition for Special Immigrant Juvenile Status ("SIJS") on or before April 5, 2019. She timely files her update.
2. Respondent is a sixteen-year-old unaccompanied child with an approved I-360 Petition for Designation as a Special Immigrant Juvenile ("SIJ Petition") and a pending I-589 Application for Asylum with U.S. Citizenship and Immigration Services, which has sole initial jurisdiction over applications filed by Unaccompanied Alien Children. *See* Exhibit A, I-360 Approval Notice, and I-589 Receipt Notice. The Respondent's SIJ Petition was filed on June 12, 2017 and approved on November 12, 2018. *Id.* Her asylum application has been pending since April 2017.
3. Respondent now seeks a continuance of her case on the status docket to allow her to pursue adjustment of status once her priority date of June 12, 2017 becomes current.
4. "Continuances are a legitimate and appropriate case-management tool for immigration judges." *Matter of L-A-B-R- et al.*, 27 I&N Dec. 405, 406 (citing *Matter of Castro-Tum*, 27 I&N Dec., 271, 293 (A.G. 2018) (internal citations omitted)). An "Immigration Judge may grant a motion for continuance for good cause shown." 8 C.F.R. § 1003.29; *see also* 8 C.F.R. § 1240.6, *Matter of L-A-B-R-*, 27 I&N Dec. at 406). The good-cause standard requires consideration and balancing of multiple relevant factors. *Matter of Hashmi*, 24 I&N Dec. 785, 790 (BIA 2009).
5. Where the respondent requests a continuance to accommodate a collateral proceeding, immigration judges must assess whether good cause exists by considering primarily (1) the likelihood that the collateral relief will be granted and (2) will materially affect the outcome of the removal proceedings, and (3) any other relevant secondary factors. *Matter L-A-B-R-*, 27 I&N Dec. at 419; *Matter of Hashmi*, 24 I&N Dec. at 790.
  - i. Respondent is likely to be granted permanent residency: Respondent is an approved Special Immigrant Juvenile who is eligible for and likely to be granted adjustment of status once her priority date of June 12, 2017 becomes current. Respondent will be statutorily eligible for adjustment of status under INA §245(a) once her priority date becomes current. Respondent is a sixteen-year-old child with no applicable grounds of inadmissibility and no adverse factors. The sole ground of inadmissibility in Respondent's case of entering without inspection or admission is inapplicable to Special Immigrant Juveniles under INA §245(h)(2)(A). Therefore, the Respondent is statutorily eligible for and likely to be granted adjustment of status.
  - ii. The relief will materially affect the outcome of the removal proceedings: Immigration judges must consider the impact on removal proceedings if the collateral relief is granted by USCIS. *Matter of L-A-B-R-*, 27 I&N Dec. at 419. According to the former Attorney General's recent decision in *Matter of L-A-B-R*, good cause for continuances

exists where respondents “pursue a visa petition that, if approved by USCIS, would have enabled them to apply for adjustment of status in the immigration court and thereby potentially avoid removal.” *Id.* at 414 (citing *Matter of Hashmi*, 24 I &N Dec. at 786). The Attorney General and Board have applied a multi-factor framework to find good cause exists for a continuance where the respondent pursues a family-based visa, employment-based visa, or a U visa when, if approved, the respondent would be allowed to adjust status. *Matter of L-A-B-R-*, 27 I&N Dec. at 408 (citing *Hashimi*, 24 I&N Dec. at 790, *Matter of Rajah*, 25 I&N Dec. 127 (BIA 2009), and *Matter of Sanchez Sosa*, 25 I&N Dec. 807 (BIA 2012)).

Here, the Respondent has an approved visa petition that will allow her to adjust status and avoid removal. The Respondent is statutorily eligible to adjust her status and does not need a waiver of inadmissibility. Therefore, her approved visa petition will allow her to adjust her status and materially affect the outcome of her removal proceedings.

- iii. Relevant secondary factors: *Matter of L-A-B-R-* provides additional, non-exclusive secondary factors for immigration judges to consider, such as (a) the respondent’s diligence in seeking collateral relief, (b) the Department’s position on the motion for continuance, and (c) administrative efficiency. 27 I&N Dec. at 415-16.
  - a) Respondent has diligently sought collateral relief: The immigration judge may examine whether a respondent is exercising due diligence in pursuing collateral relief in advance of the noticed hearing date. *Matter of L-A-B-R-*, 27 I&N Dec. at 415.

Here, unlike the respondents in *L-A-B-R* who requested multiple continuances to pursue collateral relief that was never filed, the Respondent has diligently pursued collateral relief. She sought the required state court order diligently and then submitted her application to USCIS soon after which has now been approved. Respondent is merely awaiting her priority date of June 12, 2017 to become current on the Department of State visa bulletin. As of April 2019, priority dates prior to March 8, 2016 are current<sup>1</sup>. Respondent has no control over the Department of State visa bulletin or any delays in visa availability.

- b) DHS has not expressed a position on the motion for continuance: The Department’s position is one of multiple non-exclusive factors in considering granting a motion to continue. *Id.* at 416. “But immigration judges need not treat as controlling DHS’s consent to, opposition to, or failure to take a position on a motion for continuance.” *Id.* An otherwise approvable motion to continue should not be denied merely because the Department has expressed an opposition. *See A-G-M-*, XXXX XXX 127 (BIA July 2, 2015) (citing *Matter of Lemus*, 25 I&N Dec 61, 64 (BIA 2009)).

Here, undersigned counsel has not sought the Department’s position regarding a continuance in the instant case. However, in other similarly situated cases, the Department has indicated a

---

<sup>1</sup> See Department of State Visa Bulletin for April 2019, Exhibit B, also available at <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2019/visa-bulletin-for-april-2019.html>.

policy of opposing all continuances for minors with pending or approved petitions for Special Immigrant Juvenile Status. The Department has expressed a desire to pursue all cases before the court to completion, regardless of pending or approved visa petitions with USCIS, even for children. In *Matter of Garcia*, 16 I&N Dec 653 (BIA 1978), the Board weighed the Department's interest in pursuing the case to its completion before the Immigration Court against a respondent's request for a continuance for the adjudication of an I-130 petition. The Board held that the respondent should be allowed a continuance to await the adjudication of his visa petition since its approval would result in "a substantial claim to relief from deportation under Section 245 of the Act." *Id* at 657.

Like the respondent in *Matter of Garcia*, here the Respondent is awaiting the opportunity to pursue "a substantial claim to relief from deportation under Section 245 of the Act" (specifically INA §245(a)). To deny her a continuance would be to deny her the chance to pursue relief from deportation. In addition, the Court should weigh the Department's opposition against the compelling fact that the Respondent's relief from deportation is based on the fact that she is a young child who has been determined by a State court to be the victim of parental abuse, neglect, and/or abandonment and that court has determined that removal would not be in her best interest. Further, this Court should consider that the Department of Homeland Security USCIS has already designated the Respondent a Special Immigrant Juvenile.

- c) A continuance promotes administrative efficiency: Continuances are intended to promote efficient judicial case management. *Matter of L-A-B-R-*, 27 I&N Dec. at 416. In considering administrative efficiency, immigration judges may consider the length of continuance requested, the procedural history of the case, the number of hearings held and continuances granted previously, or the timing of the continuance motion. *Id.* at 405, 413, 416; *See also Matter of Hashmi*, 24 I&N Dec. at 793 ("the Immigration Judge may consider the reasons for the continuance and other relevant procedural factors"). Here, Respondent's procedural history demonstrates she is diligently pursuing collateral relief and not causing any undue delays and that a continuance would promote administrative efficiency.

Further, in evaluating docketing or processing priorities for immigration judges, Chief Judge MaryBeth Keller has directed that the Respondent is not a processing priority. *See Chief Judge Mary Beth Keller, Memorandum: Case Processing Priorities, January 31, 2017, page 2* ("[u]naccompanied children (UC) who are not in the care and custody of HHS/ORR will no longer be a docketing priority" and "the cases of these unaccompanied children, whether pending or newly filed, will no longer be case processing priorities"). Respondent was a designated an Unaccompanied Alien Child and was released by HHS/ORR to a sponsor, thus she is not a docketing or processing priority.

6. In several unpublished decisions, the Board found that, absent compelling reasons, failure to grant a continuance to allow a Respondent to pursue designation as a Special Immigrant Juvenile was reversible error, even for Respondents who had not yet obtained the requisite State-court order. *See BIA unpublished decisions at Exhibit C: J-S-P-, AXXX XXX 178* (BIA

June 17, 2015); *A-G-M-*, AXXX XXX 127 (BIA July 2, 2015); *M-A-J-*, AXXX XXX 274 (BIA Sept. 30, 2015) (“denial of the continuance was not a good utilization of Immigration Court and Board resources. Absent compelling reasons, an Immigration Judge should continue proceedings to await adjudication of a pending state dependency petition in cases such as the one before us.”); *C-E-M-M-*, AXXX XXX 189 (BIA March 15, 2017) (noting that guidance by the Chief Immigration Judge states that if an unaccompanied child is seeking SIJS status the case must be reset for that process to occur in the appropriate state or juvenile court.); *Matter of K-Z-P-*, AXXX XXX 965 (BIA February 16, 2018) (reversing denial of continuance where minor respondent was diligently pursuing state court order required for SIJS); *Matter of K-A-O-M-*, A208-449-871 (BIA June 7, 2018) (remanding where respondent had obtained state court order and filed petition for SIJS while on appeal for denial of continuance); *Matter of E-A-G-*, AXXX XXX 014 (BIA Dec. 13, 2018) (remanding for consideration of continuance based on state court case being filed); *see also*, *Matter of K-Y-R-M* AXXX XXX 180 (BIA July 16, 2018) and *Matter of J-C-R-M*, AXXX XXX 178 (BIA July 16, 2018) (reinstating and terminating proceedings for children with approved SIJS petitions); *Matter of L-A-M-T*, AXXX XXX 861 (BIA Aug. 13, 2018) (rescinding in absentia removal order for child with approved SIJS petition).

7. In this case, the minor Respondent has established good cause for a motion to continue on the status docket. There are no negative factors in her case or compelling reasons to support a denial of this request for a continuance on the status docket.

WHEREFORE because Respondent has demonstrated good cause for this Motion, Respondent respectfully requests that the Court continue her case on the status docket.

Respectfully submitted on this DATE, 2019, by:

---

YOUR NAME

## EXHIBITS

TAB	DESCRIPTION	PAGE
A	I-360 Approval Notice	
B	Department of State Visa Bulletin	
C	<p>BIA unpublished decisions:</p> <p><i>J-S-P-</i>, AXXX XXX 178 (BIA June 17, 2015)</p> <p><i>A-G-M-</i>, AXXX XXX 127 (BIA July 2, 2015)</p> <p><i>M-A-J-</i>, AXXX XXX 274 (BIA Sept. 30, 2015)</p> <p><i>C-E-M-M-</i>, AXXX XXX 189 (BIA March 15, 2017)</p> <p><i>K-Z-P-</i>, AXXX XXX 965 (BIA February 16, 2018)</p> <p><i>K-A-O-M-</i>, A208-449-871 (BIA June 7, 2018)</p> <p><i>E-A-G-</i>, AXXX XXX 014 (BIA Dec. 13, 2018)</p> <p><i>K-Y-R-M</i> AXXX XXX 180 (BIA July 16, 2018)</p> <p><i>J-C-R-M</i>, AXXX XXX 178 (BIA July 16, 2018)</p> <p><i>L-A-M-T</i>, AXXX XXX 861 (BIA Aug. 13, 2018)</p>	

**Proof Of Service**

On [DATE] I [NAME], served a copy of this RESPONDENT’S MOTION TO CONTINUE TO THE STATUS DOCKET and attached documentation on counsel for the Department of Homeland Security via first-class mail to ICE-OCC 12445 E. Caley Ave. Centennial, CO 80111

---

NAME

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
DENVER, CO

In The Matter Of:

NAME

File No.: A

Respondent

**ORDER OF THE IMMIGRATION JUDGE**

Upon consideration of the Respondent's Motion to Continue to the Status Docket:

It is HEREBY ORDERED that the motion be ☐ ☐ GRANTED ☐ ☐ DENIED because:

- ☐ ☐ DHS does not oppose the motion.
- ☐ ☐ Good cause has been established for the motion.
- ☐ ☐ Good cause has NOT been established for the motion.
- ☐ ☐ The court agrees with the reasons stated in the opposition to the motion.
- ☐ \_\_\_\_\_

☐ It is HEREBY ORDERED that the case is being set for the Court's Status docket on:

\_\_\_\_\_

☐ The Court orders the Respondent to provide a status update on or before:

\_\_\_\_\_

☐ Either party may move for the case to return to the Court's active docket at any time.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Immigration Judge

---

Certificate of Service

This document was served by: ☐ mail ☐ Personal Service

To: ☐ Alien ☐ Alien c/o Custodial Officer ☐ Alien's Atty/Rep ☐ DHS

Date: \_\_\_\_\_

By: Court Staff \_\_\_\_\_

Attachments: \_\_\_\_\_