

The Children's Program
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NON-DETAINED

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

In the Matter of:)
)
[INSERT NAME])
In removal proceedings)
_____)

File No.: A# [insert number]

Immigration Judge [insert judge name]
Hearing: [insert date]

Next Master Calendar

RESPONDENT'S MOTION TO CONTINUE TO THE STATUS DOCKET

COMES NOW the Respondent, by and through undersigned counsel, and requests a continuance of her master calendar hearing to be placed on the court's status docket. In support of this motion, Respondent states:

1. The Respondent is scheduled for a continued master calendar hearing on [insert date and time].
2. Respondent is a X-year-old child pursuing Special Immigrant Juvenile Status (SIJS). Pro-bono counsel for the Respondent obtained the requisite state court order from the [insert county] County District Court verifying that she meets the statutory requirements for SIJS. See Exhibit A, [insert title and date of predicate order]. The Respondent submitted her petition to the United States Citizenship and Immigration Services (USCIS) via priority mail on [insert date]. See Exhibit B, [refer to mailing receipt or application receipt]. Minor [Respondent will submit a receipt of her I-360 petition as soon as it is received.] Respondent seeks a continuance of her next hearing to the status docket to allow her to pursue her I-360 and await the adjudication of her petition.
3. "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).
4. 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. USCIS will likely grant the collateral relief sought: Respondent is pursuing SIJS which, once approved, will allow her to adjust her status to permanent residency. USCIS is likely to grant the Respondent's SIJS and adjustment applications. In order to be eligible for SIJS, a state court with jurisdiction over the care and custody of juveniles must make the following findings:
 - a) The minor is unmarried and under 21 years of age;
 - b) The minor is dependent on a juvenile or State court or has been legally committed or placed by a juvenile or State court in the custody of an agency or Department of the State or an individual or entity;
 - c) Reunification of the minor with one or both parents is not viable due to abuse, neglect, abandonment, or similar basis found under State law; and

[Insert name and A#]

- d) It is not in the minor's best interest to be returned to his or her country of origin or last habitual residence. *See* INA §101(a)(27)(J).

“As a general rule, there is a rebuttable presumption that an alien who has filed a prima facie approvable application with the USCIS will warrant a favorable exercise of discretion for a continuance for a reasonable period of time.” *Matter of Sanchez Sosa*, 25 I&N Dec. 807, 815 (BIA 2012); *see also* *Matter of Hashimi*, 24 I&N Dec. at 792 (finding that evidence an application is prima facie approvable is evidence of an application's likelihood of success).

Here, Respondent's petition for SIJS is prima facie approvable. Respondent obtained the requisite state court order from the [insert county] County District Court verifying that she meets the statutory requirements for SIJS. *See* Exhibit A, [insert county] County District Court Order. In fiscal year 2018, USCIS approved the overwhelming majority of I-360 petitions for Special Immigrant Juveniles.¹ As Respondent has demonstrated her application is prima facie approvable, and given USCIS high approval rates, Respondent is likely to be granted SIJS.

Upon approval of her SIJS petition, Respondent will be statutorily eligible for adjustment of status under INA §245(a) once her priority date becomes current. 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 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 Hashimi*, 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)).

¹ USCIS approved 74% of adjudicated I-360 petitions made by Special Immigrant Juveniles in fiscal year 2018. *See* USCIS, *Number of I-360 Petitions for Special Immigrant with a Classification of Special Immigrant Juvenile (SIJ) by Fiscal Year, Quarter and Case Status Fiscal Year 2018*, available at: https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Adjustment%20of%20Status/I360_sij_performancedata_fy2018_qtr4.pdf.

Here, the Respondent is pursuing a visa petition that, if approved, will allow her to adjust her status and avoid removal. The Respondent is statutorily eligible to adjust her status and does not need a waiver of inadmissibility. Therefore, if granted her collateral relief, it will 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 her required state court order diligently and then submitted her application to USCIS soon after. See Exhibit A, [insert county] County District Court Order, dated [insert date]; Exhibit B, [insert mailing receipt or application receipt]. Respondent is a X-year old child working with separate state court and immigration pro-bono counsel. She is not responsible for any delay and is pursuing her collateral relief as diligently as possible.

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 to grant 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-*, AXXX XXX 127 (BIA July 2, 2015) (attached at Exhibit D) (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 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

[Insert name and A#]

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 adjudication of a visa petition, the approval of which would “result in a substantial claim to relief from deportation under Section 245 of the Act” (specifically INA §245(a)). To deny her a continuance to await the adjudication of her petition 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 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.

- 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”).
- d) Here, Respondent is a minor child with separate pro bono counsel in her state court and immigration court proceedings. [Respondent responded to the Notice to Appear at her Master Calendar Hearing on XXXX]. She obtained her state court order on [insert date]; her I-360 petition was mailed soon after on [insert date]. *See* Exhibit A, [insert county] County District Court Order, dated [insert date]; Exhibit B, [insert proof of mailing or receipt]. [Although by statute petitions for designation as a Special Immigrant Juvenile must be adjudicated within 180 days of filing, the Respondent’s petition has not yet been adjudicated by USCIS. *See* TVPRA, Pub.L.No. 110-457, 122 Stat. 5044, Section 235(d)(2).] Respondent has no control over the adjudication of her petitions at USCIS. She now requests a continuance to the status docket to await the adjudication of that petition. Respondent’s procedural history demonstrates she is diligently pursuing collateral relief and not causing any undue delays.

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

[Insert name and A#]

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 designated an Unaccompanied Alien Child and was released to a sponsor, thus she is not a docketing or processing priority.

5. 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).
6. In this case, the minor Respondent has established good cause for a motion to continue and be placed on the status docket. Respondent’s collateral relief is likely to be granted and will materially affect her removal proceedings. She is prima facie eligible for SIJS and will likely be granted SIJS and her adjustment of status, which will materially affect her proceedings. Additional secondary factors weigh in the Respondent’s favor. She has diligently pursued relief through her pro-bono counsel, she has not caused undue procedural delays, and warrants additional favorable discretion as a SIJS applicant, who has demonstrated that she was abused, abandoned or neglected by a parent or both parents and that a State court has determined it would not be in her best interests to be removed. There are no negative factors in her case or compelling reasons to support a denial of her request for a continuance to be placed on the status docket.
7. Respondent will provide an update to the court as to the status of her petition in compliance with any deadline imposed by this court.

WHEREFORE because Respondent has demonstrated good cause for this Motion, Respondent respectfully requests that the Court continue her master calendar hearing to be placed on the status docket.

[Insert name and A#]

Respectfully submitted on this Xth day of XXXXXXXX, by:

[insert attorney name]

EXHIBITS

TAB	DESCRIPTION	PAGE
A	[insert county] County District Court Order, dated [insert date]	1
B	I-360 Petition for Special Immigrant Juvenile Status receipt notice, dated [insert received date]	2-3
C	BIA unpublished decisions: <i>J-S-P-</i> , AXXX XXX 178 (BIA June 17, 2015) <i>A-G-M-</i> , AXXX XXX 127 (BIA July 2, 2015) <i>M-A-J-</i> , AXXX XXX 274 (BIA Sept. 30, 2015) <i>C-E-M-M-</i> , AXXX XXX 189 (BIA March 15, 2017) <i>K-Z-P-</i> , AXXX XXX 965 (BIA February 16, 2018) <i>K-A-O-M-</i> , A208-449-871 (BIA June 7, 2018) <i>E-A-G-</i> , AXXX XXX 014 (BIA Dec. 13, 2018) <i>K-Y-R-M</i> AXXX XXX 180 (BIA July 16, 2018) <i>J-C-R-M</i> , AXXX XXX 178 (BIA July 16, 2018) <i>L-A-M-T</i> , AXXX XXX 861 (BIA Aug. 13, 2018)	4-16

Proof Of Service

On _____, 2018, I, [insert your 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

[insert your name]

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

In The Matter Of:

NAME

File No. **AXXX-XXX-XXX**

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 on the pending application 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: _____

[Insert name and A#]