

Motion for Administrative Closure

Administrative closure is a procedural tool created for the convenience of the Immigration Courts and the BIA, and “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 of time.” Matter of Avetisyan, 25 I&N Dec. 688, 692 (BIA 2012). An Immigration Judge or the BIA has authority to administratively close removal proceedings, even if a party opposes, if it is otherwise appropriate under the circumstances. Matter of Avetisyan, 25 I&N Dec. at 694 (BIA 2012), overruling Matter of Gutierrez, 21 I&N Dec. 479 (BIA 1996). In determining whether administrative closure of proceedings is appropriate, an Immigration Judge should weigh all relevant factors, 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, application, or other action he or she is pursuing outside of removal proceedings; (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 proceedings (for example, termination of the proceedings or entry of a removal order) when the case is recalendared before the Immigration Judge or the appeal is reinstated before the Board.

Avetisyan, 25 I&N Dec. at 696. However, the most important factor in deciding whether to administratively close proceedings “is whether the party opposing administrative closure has provided a persuasive reason for the case to proceed and be resolved on the merits.” Matter of W-Y-U-, 27 I&N Dec. 17, 20 (BIA 2017). In deciding whether to grant a motion for administrative closure, an Immigration Judge cannot consider whether the respondent “falls within the DHS’s enforcement priorities or will actually be removed from the U.S.” Id. at 19.

Pending Adjudication of a Direct Appeal of a Criminal Conviction

The BIA has held that removal proceedings may be delayed, where warranted, pending the adjudication of a direct appeal¹ of a criminal conviction. Matter of Montiel, 26 I&N Dec. 555 (BIA 2015) (finding the circumstances of the case warranted administrative closure even in a jurisdiction where finality was not required for a conviction to support a charge of removability).² Matter of Avetisyan, 25 I&N Dec. 688 (BIA 2012), followed.

¹ The BIA distinguished a direct appeal from cases involving a pending post-conviction motion, which generally does not affect the finality of a conviction for immigration purposes. 26 I&N Dec. at 557 n.2 (citing Matter of Ponce de Leon, 21 I&N Dec. 154, 156-57 (BIA 1996, 1997; A.G. 1997). The Second Circuit has found that a late-reinstated appeal under section 460.30 of New York Criminal Procedure Law is not distinguishable from any other appeal. Abreu v. Holder, 378 F. App’x 59 (2d Cir. 2010). See also Sutherland v. Holder, 769 F.3d 144, 147 (2d Cir. 2014) (holding that Respondents who obtain vacatur for convictions solely for rehabilitative reasons and to avoid adverse immigration consequences, the conviction remains valid for purposes of establishing removability).

² The Board noted the following circumstances were relevant to its determination that administrative closure was warranted: (1) the respondent was convicted as a result of a jury trial rather than a guilty plea, (2) his direct appeal concerned the validity of the underlying conviction, not the sentence imposed, and (3) if the respondent prevailed on the direct appeal of his conviction, he would not be subject to removal on that basis. Montiel, 26 I&N Dec. at 557.

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