

Motion to Continue Removal Proceedings

Under 8 C.F.R. § 1003.29, an immigration judge “may grant a motion for continuance for good cause shown.” The “[a]judication of a motion to continue [in order to pursue adjustment of status premised on a pending family-based visa petition] should begin with the presumption . . . that discretion should be favorably exercised where a prima facie approvable visa petition and adjustment application have been submitted in the course of an ongoing removal hearing.” Matter of Hashmi, 24 I&N Dec. 785, 790 (BIA 2009). The Second Circuit has made clear that the proper analysis is whether a pending visa petition is prima facie approvable, not whether the petition had actually been approved. Flores v. Holder, 779 F.3d 159 (2d Cir. 2015).

In Hashmi, 24 I&N Dec. 785, 790 (BIA 2009), the BIA provided the following nonexhaustive factors to consider in determining whether good cause exists to continue proceedings to afford a respondent an opportunity to apply for adjustment of status premised on a pending family-based visa petition: “(1) the DHS response to the motion; (2) whether the underlying visa petition is prima facie approvable; (3) the respondent's statutory eligibility for adjustment of status; (4) whether the respondent's application for adjustment merits a favorable exercise of discretion; and (5) the reason for the continuance and other procedural factors.” Hashmi, 24 I&N Dec. at 790. While these factors may be relevant, “the focus of the inquiry is the likelihood that the adjustment application will be granted.” Hashmi, 24 I&N Dec. at 790. The Second Circuit has held that the Hashmi factors must be considered before denying a motion to continue in order to pursue adjustment of status premised on a pending family-based visa petition. Flores v. Holder, 779 F.3d at 164.