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## THE STATUS DOCKET

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PURPOSE: Provide guidance to adjudicators on the use of status dockets

OWNER: David L. Neal, Director 

AUTHORITY: 8 C.F.R. § 1003.0(b)

CANCELLATION: Policy Memorandum 19-13

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### I. Introduction

This memorandum addresses the use of the status docket in immigration courts. The status docket is a mechanism for holding cases in abeyance in certain, specified instances, such as where the case is not ripe for adjudication. The status docket is a valuable case management tool, and its use promotes efficiency and fairness. All immigration courts are therefore permitted to employ status dockets. This memorandum supersedes and rescinds Policy Memorandum 19-13, *Use of Status Dockets*, and sets out new guidelines pertaining to the status docket, to apply going forward.

### II. Guidelines

There are two categories of cases that qualify for the status docket.

#### *Category One*

The first category of cases that qualify for the status docket is comprised of cases in which an immigration judge has granted a motion to continue: (1) to wait for another agency or another court either to adjudicate an application or petition or to otherwise take action related to the respondent; or (2) to wait for a visa to become available. For example, a case falls within this category where –

- The respondent is pursuing adjustment of status, and the immigration judge has granted a motion to continue to await the adjudication by United States Citizenship Services (USCIS) of a Form I-130, *Petition for Alien Relative*, filed on the respondent's behalf. See *Matter of Hashmi*, 24 I&N Dec. 785, 790 (BIA 2009) (setting forth five factors

relevant to whether to continue removal proceedings “to afford the respondent an opportunity to apply for adjustment of status premised on a pending visa petition”).<sup>1</sup>

- The respondent is pursuing U nonimmigrant status, and the immigration judge has granted a motion to continue to await the adjudication by USCIS of a Form I-918, *Petition for U Nonimmigrant Status*, or the law enforcement certification at Supplement B of the Form I-918. *See Matter of Sanchez Sosa*, 25 I&N Dec. 807, 815 (BIA 2012) (“As a general rule, there is a rebuttable presumption that a [noncitizen] 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.”).
- The respondent is pursuing special immigration juvenile (SIJ) status, and the immigration judge has granted a motion to continue to await a state court’s adjudication of a guardianship petition or USCIS’ subsequent adjudication of a Form I-360, *Petition for Amerasian, Widow(er), or Special Immigrant*. *See id.*
- The respondent’s petition for U nonimmigrant status or SIJ status has been approved, and the immigration judge has granted a motion to continue to wait for a visa to become available.

This list of examples is not exhaustive, and there will be other situations that fit within this category as well.

Where an immigration judge grants a motion to continue and the case fits within this first category of cases, the judge may choose whether to place the case on the status docket. If the immigration judge places the case on the status docket, the immigration court will not schedule a future hearing. Rather, the court will send the parties a notice stating that the case has been placed on the status docket. The court will then, at six-month intervals, send the parties requests for updated information about the case. If the party that motioned for the continuance fails to timely respond to a request for updated information, then the court returns the case to the active docket and schedules a hearing. If the party timely responds, then the immigration judge determines whether the case should remain on the status docket or be returned to the active docket. For example, if the immigration judge granted a continuance because a family member of the respondent had filed a Form I-130 with USCIS, and the respondent reports that the petition remains pending, the judge would keep the case on the status docket. If the respondent reports that the petition was granted, the immigration judge would return the case to the active docket, and a hearing would be scheduled, unless the case could be resolved on paper with the parties’ consent without a hearing.

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<sup>1</sup> In *Matter of L-A-B-R-*, 27 I&N Dec. 405 (A.G. 2018), the Attorney General further addressed motions for continuances. That decision did not overrule *Matter of Hashmi*. To the contrary, the Attorney General stated that *Matter of L-A-B-R-* was “consistent with the [Board of Immigration Appeals’] precedent,” including *Matter of Hashmi*. *Id.* at 414.

## *Category Two*

The second category of cases that qualify for the status docket is comprised of cases in which placement on the status docket is necessary for EOIR to comply with, or otherwise to give effect to, a federal court order. When those circumstances arise, EOIR's Office of the General Counsel (OGC) will provide guidance as to which cases or groups of cases fall within this category and will advise the Office of the Chief Immigration Judge (OCIJ) accordingly. The immigration judge need not necessarily grant a motion to continue before a case in this category can be placed on the status docket. Procedures for placing such cases on the status docket, and for returning them to the active docket when appropriate, will be determined by OCIJ in consultation with OGC, in light the court order at issue.

### **III. Conclusion**

The status docket promotes the efficient use of judicial resources while also easing burdens on parties. With the status docket, qualifying cases can be held in abeyance pending future developments, immigration judges are relieved from holding unnecessary hearings, and parties are relieved from having to appear at such hearings. Immigration judges must manage their dockets effectively, particularly given EOIR's case load, and the status docket is a valuable tool to assist judges in doing so. The status docket also helps EOIR comply with litigation-related requirements. Where an immigration judge has granted a motion to continue and has a choice whether to place the case on the status docket, the judge is encouraged to do so.<sup>2</sup> If you have any questions about appropriate use of the status docket, please contact your supervisor.<sup>3</sup>

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<sup>2</sup> Another valuable docket management tool for immigration judges is administrative closure. *See Matter of Cruz-Valdez*, 28 I&N Dec. 326, 329 (A.G. 2021) (noting that the Department of Justice is engaged in rulemaking on administrative closure and "restor[ing]," pending that rulemaking, administrative closure as governed by prior Board of Immigration Appeals precedent "except when a court of appeals has held otherwise"). As the Attorney General noted in 2021, "[i]mmigration judges have employed administrative closure for many decades" in a variety of contexts. *Id.* at 326. Some cases, for example one in which a Form I-130 was filed with USCIS on the respondent's behalf and remains pending, may qualify both for administrative closure and, in the alternative, for a continuance and subsequent placement on the status docket. A decision how best to proceed in such a case will depend on the specific facts presented.

<sup>3</sup> This memorandum is not intended to, does not, and may not be relied up on to, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States; its departments, agencies, or entities; its officers, employees, or agents; or any other person. As discussed in this memorandum, an immigration judge sometimes has the option, having granted a motion to continue in a case, to place the case on the status docket. A decision whether to grant a motion to continue is an adjudication; it is made under the governing regulations and case law and is subject to appeal. By contrast, a decision whether to place a case on the status docket is not an adjudication. This memorandum encourages immigration judges to place cases on the status docket where the judge has granted a motion to continue and the case qualifies for the status docket. But this memorandum does not mandate that an immigration judge grant or deny a particular motion to continue. In adjudicating motions to continue, as with all adjudications, immigration judges must exercise their independent judgment and discretion consistent with the law. *See* 8 C.F.R. § 1003.10(b).