

Seeking Termination vs. Administrative Closure, Tips on Proceedings Before the Executive Office of Immigration Review (EOIR) and Board of Immigration Appeals (BIA)

With the backlog of pending cases before the EOIR (over 366,758 cases since March of 2014) the Department of Homeland Security (DHS) has been reviewing low-priority cases that merit favorable exercise of prosecutorial discretion pursuant to the guidelines of the 2011 ICE “Morton Memo” (AILA InfoNet Doc. No. 11061734). *See* Prosecutorial Discretion: A Statistical Analysis” *American Immigration Council*. N.p., 11 Jun. 2012. Web. 7 May 2014. Administrative Closure is an exercise of prosecutorial discretion, as is the Termination of Proceedings. Knowing when to request each one is crucial for helping clients placed in removal proceedings.

The Administrative Closure, which is available to an Immigration Judge and the Board, is used to temporarily remove a case from the Immigration Judge’s active calendar or the Board’s docket. An order of Administrative Closure is not final. At any time after a case has been administratively closed, either the Respondent’s counsel or DHS may move to re-calendar it before the Immigration Judge, or re-instate the appeal before the Board. The Termination of Proceedings, on the other hand, constitutes a conclusion of the proceedings where the Immigration Judge or the Board issues a final order. In the absence of a successful appeal, DHS must file another charging document to initiate new removal proceedings on the case. Therefore, it is best to terminate proceedings rather than seek administrative closure, however DHS is often not inclined to terminate cases.

The most efficient way to get a case administratively closed is by filing a Joint Motion. This requires negotiations with the Trial Attorney (TA). If the TA does not agree, you can file the Motion with the Court. The Immigration Judge has full authority to render a decision even if the motion is opposed by DHS. The Immigration Judge and the Board may, in the exercise of independent judgment and discretion administratively close proceedings under appropriate circumstances, even if a party opposes. *See Matter of Avetisyan*, 25 I&N Dec. 288 (BIA 2012). In *Matter of Avetisyan*, the Board set the following requirements for administrative closure: 1) the reason administrative closure is sought; 2) the basis for any opposition; 3) the likelihood the respondent will succeed on any application outside the removal proceedings; 4) the anticipated duration of closure; 5) the responsibility of either party, in contributing to current or anticipated delay; and 6) the ultimate outcome of removal proceedings.

This list is not conclusive however, which leaves attorneys room to be creative. Individuals with approved DACA applications, or whose DACA applications are pending, and minors whose parents have TPS can request administrative closure also. All the evidence of strong family, economic, social ties, special talents or particular issues with health, must be included in the Motion which should be in writing (unless there is a prior agreement with the TA, and the Judge

will entertain an oral Motion). Having a written Motion (in addition to your excellent oral advocacy) is important especially to preserve the evidence for appeal. If your client does not have any available form of relief in Court, always consider Administrative Closure as an option.

Termination of Proceedings can be requested on a case where DHS cannot sustain the charges in the Notice to Appear (NTA); where the NTA is improvidently issued, or when a client in removal proceedings has relief immediately available outside the Court. When an I-130 family relative petition is approved and there are no issues that would preclude a client from filing an adjustment of status application with the Service, it is prudent to seek termination of proceedings with the EOIR. Changing this scenario a little, when the client (with an I-130 approval) is unable to adjust with the Service, but is eligible to apply for the I-601A Stateside Provisional Waiver, requesting termination of proceedings may not work. In this case, first request Administrative Closure, and once the case is closed file the Stateside Provisional Waiver. After the waiver is approved re-calendar the case before the EOIR, and finally seek Termination of Proceedings. Do not let the client leave the country without terminating proceedings before the Court, as your client may self-deport himself. Keep in mind Administrative Closure is not final. Termination of Proceeding can also be requested in cases involving respondents with mental competency issues. *See Matter of M-A-M*, 25 I&N Dec. 474 (BIA 2011). *See also* “Safeguards in Removal Proceedings for Noncitizens Who Lack Mental Competency” *American Immigration Council*. N.p., 20 Dec. 2013. Web. 7 May 2014.

Be prepared, be creative and be persistent when seeking Administrative Closure or Termination of Proceedings, and do not be afraid to appeal the case if the decision does not favor your client.