



**NON-DETAINED**

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
BOARD OF IMMIGRATION APPEALS  
FALLS CHURCH, VIRGINIA**

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**In the Matter of:**



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**FILE NO: A 202**



**In Removal Proceedings**

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**RESPONDENT'S MOTION TO RECONSIDER,  
TABS A-B**

## RESPONDENT'S MOTION TO RECONSIDER

The Respondent, [REDACTED], respectfully moves the Board of Immigration Appeals ("Board") to reconsider its decision dated December 20, 2021. In denying [REDACTED] appeal, the Board entirely overlooked and failed to adjudicate a joint motion to administratively close proceedings that was jointly filed by the Department of Homeland Security ("DHS") and [REDACTED] on or about November 3, 2021. Accordingly, the Board should reconsider and vacate its prior decision and administratively close proceedings, as requested by both parties, for reasons stated in the jointly filed motion.

### **I. Background Facts and Procedural Summary**

[REDACTED] is a citizen of El Salvador who entered the United States without inspection on or around January 6, 2015. *See* Exh 1. [REDACTED] was taken into custody DHS and was issued a Notice to Appear. *See id.* Before the Immigration Judge ("IJ"), [REDACTED] conceded removability and requested to apply for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT") for relief. Oral Decision of the Immigration Judge ("IJ") at 1-2.

On November 12, 2018, about two weeks before her merits hearing was scheduled, [REDACTED] was the victim of a terrifying aggravated robbery where she was robbed at gun point at her place of business. *See* Respondent's Appeal Brief ("Resp. Br."), Tab B. [REDACTED] fully cooperated with the police in the investigation into this criminal activity. *See id.* at p. 23-27. The trauma from being robbed at gun point caused [REDACTED] to develop Post-Traumatic Stress Disorder ("PTSD"), including the following symptoms: nightmares, inability to go to sleep or stay asleep, depressed mood, feeling withdrawn, nervous, anxious, restless, hyper alter, overwhelming sense of fear, fatigue, stress related headaches, intrusive thoughts of a traumatic event, and exaggerated startle response. *See id.* at 33-41.

[REDACTED] through counsel, filed an emergency motion to continue proceedings on November 21, 2018 asking the IJ to continue proceedings so she could file a petition for U nonimmigrant status

("U visa petition"). *See* Exh 4. The motion included [REDACTED] affidavit, the police report from the incident, and proof that [REDACTED] had submitted a request for law enforcement certification with the Houston Police Department, which was pending at the time the motion was filed. *See id.* The IJ denied the motion on the grounds that there was no pending application and that prospective relief was speculative. *See* IJ Order, dated Nov. 26, 2018.

Following [REDACTED] individual hearing, the IJ issued an oral decision finding that [REDACTED] testified credibility but denying her applications for asylum, withholding of removal, and protection under the CAT and ordering her removed to El Salvador. *See* IJ. [REDACTED] reserved appeal and timely filed a notice of appeal.

On January 3, 2019, while the case was on appeal, the Houston Police Department signed [REDACTED] Form I-918, Supplement B, U Nonimmigrant Status Certification. *See* Resp. Br., Tab B at pgs. 23-27. [REDACTED] thereafter filed a petition for U nonimmigrant status with United States Citizenship and Immigration Services ("USCIS"). *See id.*, Tab A. The petition also included the police report from the incident, a psychological assessment diagnosing [REDACTED] with PTSD, an affidavit from [REDACTED] multiple letters of support, and a police clearance letter. *See id.*, Tab B. The petition is currently pending before USCIS. [REDACTED] also filed a Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, to waive any ground of inadmissibility. *See id.*, Tabs C & D.

Thereafter, [REDACTED] submitted a motion to remand to the Board asking the Board to remand proceedings to the IJ to consider the new evidence of the law enforcement certification and pending U visa petition and to continue proceedings pursuant to *Matter of Sanchez-Sosa*, 25 I&N Dec. 807 (BIA 2012), while [REDACTED] petition remains pending. The DHS did not submit any opposition to the motion. Thereafter, [REDACTED] timely filed an appeal brief arguing that the IJ erred in denying her applications for asylum, withholding of removal, and protection under the CAT and reiterating her request for the Board to remand proceedings so the IJ may consider whether the new evidence of her

pending U visa petition merits continuation of proceedings. DHS submitted a motion for summary affirmance.

On or about November 3, 2021, while this case remained pending on appeal, both parties jointly submitted a motion to administratively close proceedings. For the Board's reference, a copy of the joint motion is enclosed with this motion. *See* Tab A. The motion stated that "both parties are in agreement that administrative closure is appropriate because it would allow USCIS enough time to evaluate and adjudicate the respondent's pending U-Visa application." *Id.* at 2.

On December 20, 2021, the Board issued a decision dismissing ██████ appeal. A copy of this decision is enclosed for the Board's reference. *See* Tab B. The Board denied ██████ request to remand without considering the factors set forth in *Matter of Sanchez-Sosa*, determining instead that "these proceedings need not be remanded for her to pursue a U-visa petition because the respondent is not precluded from seeking a U-visa from USCIS by the fact that she is the subject of a final order of removal." *Id.* at 6. The Board also adopted and affirmed the IJ's decision denying ██████ applications for asylum, withholding of removal, and protection under the CAT. *Id.* Importantly, the Board did not consider or issue any ruling on the jointly filed motion to administratively close proceedings. ██████ now timely submits the instant motion to reconsider.

## **II. Standard of Review**

A motion to reconsider shall state the reasons for the motion by specifying the errors of fact or law in the prior Board decision and shall be supported by pertinent authority. INA § 240(c)(6); 8 C.F.R. § 1003.2(b)(1). The motion must be filed within 30 days after the mailing of the Board's decision sought to be reconsidered. 8 C.F.R. § 1003.2(b)(2). A party may file only one motion to reconsider any given decision and may not seek reconsideration of a decision denying a previous motion to reconsider. *Id.*

Here, [REDACTED] moves the Board to reconsider based on the specified errors of fact and law and pertinent authorities provided below. The motion is timely filed within 30 days of the Board's decision dated December 20, 2021 and is the first and only motion to reconsider that [REDACTED] has filed. As required by 8 C.F.R. § 1003.2(e), [REDACTED] respectfully notifies the Board that these proceedings are not subject to review in any court. Pursuant to the same authority, [REDACTED] notifies the Board that there are no criminal charges or criminal proceedings under the Act pending against her.

### **III. Argument**

As explained below, the Board should reconsider its prior decision for the following reasons. First, the Board erroneously failed to consider or adjudicate the parties' jointly filed motion to administratively close proceedings. This motion was agreed to by both parties and should have been granted under Board precedent. Second, in the alternative, the Board should reconsider its prior decision because the Board failed to follow its own precedent, in particular *Matter of Sanchez-Sosa*, in denying [REDACTED] motion to remand.

#### **A. The Board should reconsider its decision because the Board failed to consider or adjudicate the parties' jointly filed motion to administratively close proceedings.**

On or about November 3, 2021, while [REDACTED] appeal was pending before the Board, both parties jointly filed a motion to administratively close proceedings to allow USCIS to consider and adjudicate [REDACTED] pending U visa petition. Yet, in dismissing [REDACTED] appeal, the Board failed to consider this motion. Moreover, the Board failed to issue any ruling on the motion. This was error. In fact, Board case law instructs that this motion should have been granted.

As the Attorney General recently affirmed, the Board may administratively close a case under appropriate circumstances. *See Matter of Cruz Valdez*, 28 I&N Dec 326 (AG 2021). As the Board explained, administrative closure is an administrative convenience "used to temporarily remove a

case from an Immigration Judge’s active calendar or from the Board’s docket,” but “does not result in a final order.” *Matter of Avetisyan*, 25 I&N Dec. 688, 694 (BIA 2012). Under Board precedent, administrative closure is appropriate to allow a respondent to file an application or petition with an agency other than the Immigration Court. *Id.* at 696. In evaluating whether appropriate circumstances exist to administratively close proceedings, the Board may consider the following factors: (1) the reason for the administrative closure; (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. *Id.* “The primary consideration . . . in evaluating whether to administratively close or recalendar 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, 17 (BIA 2017). Moreover, where a respondent requests administrative closure, and the government does not object, the request should generally be granted, and the case should be administratively closed. *See Matter of Yewondwosen*, 21 I&N Dec. 1025, 1026 (BIA 1997); *see also* DAVID L. NEAL, EOIR Director, MEMORANDUM ON ADMINISTRATIVE CLOSURE (November 22, 2021) (“Where a respondent requests administrative closure, whether in a scenario described above or another scenario where administrative closure is appropriate, and DHS does not object, the request should generally be granted and the case administratively closed.”).<sup>1</sup>

Here, administrative closure was requested by both parties to allow USCIS to consider and adjudicate ██████████ pending U visa petition, which is an appropriate basis for administrative closure.

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<sup>1</sup> Available at [https://www.aila.org/infonet/eoir-issues-policy-memo-on-administrative?utm\\_campaign=HubSpot-AILA8-11-23-2021&utm\\_medium=email&\\_hsmi=186597521&\\_hsenc=p2ANqtz--IWGkpEvxy-x\\_v1gGgSSYd6i\\_DBB1ePHMaagOS81d11rqQRihr8FjVUdiuLS5nETpc234E2u0rakQOZZM53gbKmdvl5A&utm\\_content=186597521&utm\\_source=hs\\_email](https://www.aila.org/infonet/eoir-issues-policy-memo-on-administrative?utm_campaign=HubSpot-AILA8-11-23-2021&utm_medium=email&_hsmi=186597521&_hsenc=p2ANqtz--IWGkpEvxy-x_v1gGgSSYd6i_DBB1ePHMaagOS81d11rqQRihr8FjVUdiuLS5nETpc234E2u0rakQOZZM53gbKmdvl5A&utm_content=186597521&utm_source=hs_email).

*See Matter of Avetisyan*, 25 I&N Dec. at 694. Moreover, not only were both parties unopposed to the request, but both parties agreed to the motion and requested administrative closure. Under Board case law, the parties' mutual agreement to administrative closure should be the primary factor the Board considers when deciding whether to grant such motion. *See Matter of W-Y-U-*, 27 I&N Dec. at 17; *Matter of Yewondwosen*, 21 I&N Dec. at 1026. As the Board has stated, "We believe the parties have an important role to play in these administrative proceedings, and that their agreement on an issue or proper course of action should, in most instances, be determinative." *Matter of Yewondwosen*, 21 I&N Dec. at 1026. As such, the Board should have granted the motion to administratively close proceedings, which was filed for an appropriate purpose and was agreed to by both parties. However, the Board, without explanation, failed to consider or adjudicate the motion, which is an error that justifies the Board's reconsideration. The Board, accordingly, should reconsider and vacate its prior decision and grant the parties' joint motion to administratively close proceedings.

**B. In the alternative, the Board should reconsider the denial of [REDACTED] motion to remand because it failed to consider Board precedent, namely *Matter of Sanchez-Sosa*.**

Alternatively, [REDACTED] requests the Board to reconsider its denial of her motion to remand. In denying [REDACTED] request to remand, the Board failed to consider its own precedent decision in *Matter of Sanchez-Sosa*. In *Matter of Sanchez-Sosa*, the Board held that "[a]n alien who has filed a prima facie approvable petition for a U visa with the United States Citizenship and Immigration Services will ordinarily warrant a favorable exercise of discretion for a continuance for a reasonable period of time." 25 I&N Dec. at 807. The Board explained that prima facie eligibility requires the respondent to show that he or she "suffered substantial physical or mental abuse as the innocent victim of a qualifying crime for which the alien has been, is being, or will be helpful to law enforcement, which ordinarily requires an approved law enforcement certification." *Id.* In 2018, the Attorney General reaffirmed the validity of Board's decision in *Matter of Sanchez-Sosa*. *See Matter of L-A-B-*

R-, 27 I&N Dec 405, 418 (AG 2018). Thus, *Matter of Sanchez-Sosa* remains binding precedent which the Board must follow.

In support of her request to remand, [REDACTED] submitted a copy of her pending U visa petition, which was filed based on newly acquired evidence obtained while her case was pending on appeal. [REDACTED] argued that her petition, which includes the requisite law enforcement certification and other evidence of eligibility, demonstrates that she is prima-facie eligible for U nonimmigrant status. [REDACTED] requested the Board to remand proceedings to allow the IJ to consider whether continuation is appropriate under *Matter of Sanchez-Sosa* based on the new evidence, namely her pending U visa petition.

However, in denying [REDACTED] request, the Board failed to consider *Matter of Sanchez-Sosa* and failed to analyze [REDACTED] request under the factors set forth therein. For instance, the Board never determined whether [REDACTED] petition is prima facie approvable or whether she satisfied the other factors for a continuance. Rather, the Board denied [REDACTED] claim based solely on the fact that [REDACTED] could still seek a U visa from USCIS with a final order of removal. But if that factor alone were determinative, a continuance would *never* be warranted under *Matter of Sanchez-Sosa* because any respondent could likewise seek a U visa from USCIS regardless of the outcome or status of his or her removal proceedings. Consequently, the Board's reasoning in denying [REDACTED] request for remand would vitiate the applicability of *Matter of Sanchez-Sosa* in every case where a respondent seeks a continuance based on a pending U visa, an outcome which *Matter of Sanchez-Sosa* clearly forbids. Moreover, failing to consider precedent which is directly applicable to the issue at hand is an error which justifies this Court's reconsideration. As such, the Board should vacate its prior decision and, unless it grants administrative closure as discussed above, should reconsider [REDACTED] motion to remand based on the factors set forth in *Matter of Sanchez-Sosa*.



**IV. Conclusion**

For the foregoing reasons, [REDACTED] requests the Board to reconsider and vacate its prior decision. Furthermore, the Board should grant the parties' jointly filed motion to administratively close proceedings for the reasons stated above.

Respectfully submitted,

Date: January 6, 2022

[REDACTED]

In the Matter of: [REDACTED]

A Number: 202 [REDACTED]

<b>INDEX OF SUPPORTING DOCUMENTS</b>		
<b>TAB</b>	<b>DESCRIPTION</b>	<b>PAGE #</b>
A	<ul style="list-style-type: none"><li>• Copy of U.S. Department of Homeland Security and Respondent's Joint Motion for Administrative Closure</li></ul>	1
B	<ul style="list-style-type: none"><li>• Copy of BIA decision dated December 20, 2021</li></ul>	4

In the Matter of: [REDACTED]

A Number: 202 [REDACTED]

**PROOF OF SERVICE**

On January 6, 2022, I, [REDACTED], Esquire, through the ICE E-Service Program, electronically served a copy of the Respondent's Motion to Reconsider, Tabs A-B, and any attached pages to U.S. Department of Homeland Security at the following address:

U.S. Department of Homeland Security  
U.S. Immigration and Customs Enforcement  
Office of the Chief Counsel  
126 Northpoint Drive, Suite 2020  
Houston, TX, 77060

[REDACTED], Esquire