

Immigration Court: BIA

Case: *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012) **Date:** January 31, 2012

Adjudicated by: Panel: Miller, Adkins-Blanch, Guendelsberger

Opinion: Miller

Tags: Immigration, Administrative Closure, IJs, BIA, opposing party

Question Presented: Do IJs and BIA members have the authority to administratively close a case over one party's objection?

Holdings: Yes, IJs and the BIA may exercise authority to administratively close a case even over one party's objection, so long as their decision considers six factors:

1. The reason administrative closure is sought;
2. The basis for any opposition to it;
3. The likelihood that the respondent will succeed in any pending petition outside removal proceedings;
4. The anticipated duration of the closure;
5. The responsibility of either party for contributing to the delay;
6. The ultimate outcome of removal proceedings when the case gets taken up again.

Rationale: Sometimes administrative closure is the most expeditious way to handle a case when actions are pending indefinitely that are outside the control of either party.

Facts: Native and citizen of Armenia who overstayed a J-1 exchange visa married an LPR, who was in the process of naturalizing and had filed a visa petition on her behalf. EIGHT CONTINUANCES LATER, respondent sought administrative closure. DHS objected. After two more continuances, IJ finally granted administrative closure, and DHS appealed.

Appeals to Statute & Precedent:

- ***Matter of Gutierrez*, 21 I&N Dec. 479 (BIA 1996):** a case may not be administratively closed if one party objects. **OVERRULED.** ("... has been interpreted as investing a party, typically the DHS, with absolute veto power over administrative closure requests," at 692.)
- **8 C.F.R. § 1240.1(a)(1)(iv), (c):** IJs have authority and discretion to handle cases appropriately.

Quotes:

- "Administrative closure is a procedural tool created for the convenience of the Immigration Courts and the Board." *Matter of Avetisyan*, 25 I&N Dec. at 690.

- “We now find that it is improper to afford absolute deference to a party’s objection, and we hold that an Immigration Judge or the Board has the authority to administratively close a case, even if a party opposes, if it is otherwise appropriate under the circumstances.” *Matter of Avetisyan*, 25 I&N Dec. at 690.
- Interpreting 8 C.F.R. § 1240.1(a)(1)(iv), (c): “An Immigration Judge has the authority to regulate the course of the hearing and to take any action consistent with applicable law and regulations as may be appropriate.” *Matter of Avetisyan*, 25 I&N Dec. at 691.
- Interpreting 8 C.F.R. § 1003.10(b): “In deciding individual cases, an Immigration Judge must exercise his or her independent judgment and discretion and may take any action consistent with the Act and regulations that is appropriate and necessary for the disposition of such cases.” *Matter of Avetisyan*, 25 I&N Dec. at 691.
- Interpreting 8 C.F.R. § 1003.1(d)(1): “Board Members must exercise independent judgment and discretion in considering and determining the cases coming before them, and they may take any action consistent with their authority under the Act and the regulations as is appropriate and necessary for the disposition of the case.” *Matter of Avetisyan*, 25 I&N Dec. at 691.
- “During the course of proceedings, an Immigration Judge or the Board may find it necessary, or in the interests of justice and fairness to the parties, prudent to defer further action for some period of time.” *Matter of Avetisyan*, 25 I&N Dec. at 691.
 - Continuances: “Because it keeps a case on the Immigration Judge’s active calendar, a continuance may be appropriately utilized to await additional action required of the parties that will be, or is expected to be, completed within a reasonably certain and brief amount of time.” *Matter of Avetisyan*, 25 I&N Dec. at 691.
 - Administrative Closure: “...used to temporarily remove a case from an Immigration Judge’s active calendar or from the Board’s docket. . . . **In general, administrative closure may be appropriate to await an action or even 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. at 692.
- “More importantly, the rule stated in *Gutierrez* directly conflicts with the delegated authority of the Immigration Judges and the Board and their responsibility to exercise independent judgment and discretion in adjudicating cases and to take any action

necessary and appropriate for the disposition of the case.” *Matter of Avetisyan*, 25 I&N Dec. at 693.

- “The courts indicated that permitting the DHS to unilaterally block such a motion to reopen interfered with the Board’s exercise of its independent judgment and discretion.” *Matter of Avetisyan*, 25 I&N Dec. at 693.

Commentary:

- Note the presupposition here: IJs and the Board are statutorily authorized to exercise independent judgment and discretion in how they handle cases, and administrative closure is assumed to be one of the appropriate tools they can use.