

BIA

Case: *Matter of Ibarra-Vega*, 29 I&N Dec. 476 (BIA 2026) **Date:** February 27, 2026

Adjudicated by: Montante, Owen, Gallow

Opinion: Owen

Tags: U Visa, EOIR, Administrative Closure, recalendaring

Questions Presented in Interlocutory Appeal by DHS:

1. How to handle U Visa lag time when Respondent is in removal proceedings?
2. When are administrative closure and recalendaring appropriate?

Holdings:

1. “When a U nonimmigrant visa is not immediately available to a respondent and the record does not establish that one is likely to be available in the reasonably near future, administrative closure over the Department of Homeland Security’s objection is inappropriate.” 476
2. “The Board and Immigration Judges have no authority to use administrative closure as a de facto extra-statutory form of relief that effectively grants amnesty to thousands of removable aliens because they may be eligible for a visa sometime in the future.” 476, 481
3. **This decision “applies regardless of what collateral action a party is waiting for, whether it is the adjudication of a visa petition, application for an inadmissibility waiver, or any other immigration benefit; the availability of a visa number; or any myriad changes in personal circumstances that may impact a removal proceeding.” 481**
4. **“[W]e conclude that absent unique circumstances specific to an individual case, administrative closure in excess of 6 months is presumptively unreasonable.” 481**

Rationale:

- “[T]he respondent’s desire to continue delaying removal proceedings based on her **speculative eligibility** for a U visa sometime in the future is not a persuasive reason against recalendaring.” 479 (emphasis added)

Facts: (476) R from Mexico. Case admin closed for 13 years (starting with Prosecutorial Discretion (PD)). Applied for U visa during that time. In her opposition to recalendaring, R submitted ONLY a receipt notice for her I-918 petition, no extra evidence establishing prima facie eligibility / bona fide determination. (479)

Procedural History:

- **2010** – Respondent’s removal proceedings commenced
- **8/30/2013** – DHS moved for admin closure based on PD
- **9/4/2013** – Respondent’s proceedings were administratively closed by IJ
- **5/4/2018** – Respondent filed U Visa petition
- **6/26/2025** – DHS moved to recalendar
- **9/16/2025** – IJ denied DHS’s motion to recalendar
- **10/2025** – DHS filed an interlocutory appeal of the IJ’s denial

Appeals to Statute & Precedent:

- **INA § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U):** U Visa statute
- **8 C.F.R. § 1003.18(c):** “Administrative closure is the temporary suspension of a case” from Immigration Court.
- **8 C.F.R. § 1003.18(c)(3)(ii)(B):** The basis for opposition to recalendar is a relevant factor.
- **8 C.F.R. § 1003.18(c)(3)(ii)(C):** length of time elapsed since case was admin closed is a relevant factor.
- **8 C.F.R. § 1003.18(c)(3)(ii)(D):** the likelihood that the alien will succeed is a relevant factor. [This is incorrectly cited as “1003.18(c)(ii)(F)” on 479]
- **8 C.F.R. § 1003.1(1):** Same, but for BIA.
- **8 C.F.R. § 1003.29:** Continuance regulations.
- **8 C.F.R. § 214.14(d)(2) (2026):** USCIS will place eligible U visa petitioners on a waiting list; *see also* **3 USCIS Policy Manual, pt. C, chs. 5-6** (explaining this process)
- **8 C.F.R. § 214.14(d)(2):** DHS has authority to grant a U Visa petitioner deferred enforcement action while a visa is pending, if there’s evidence of prima facie eligibility. (See 481 n.2)
- **INA § 214(p)(2)(A), 8 U.S.C. § 1184(p)(2)(A) (2024):** capping number of annual U Visas available at 10,000.
- ***Matter of Cahuec Tzalam*, 29 I&N Dec. 300 (BIA 2025) [11/14/2025]:** another interlocutory adjudication from a decision granting admin closure, emphasizing “reasonable period of time” for proceedings to be closed for the pendency of a collateral matter. Bring it to a close on the merits, plz.
- ***Matter of B-N-K-*, 29 I&N Dec. 96, 97 (BIA 2025) [6/6/2025]:** Administrative closure is a docket management tool meant to be temporary. “It is not a form of relief from removal, does not provide an alien with any immigration status, and is not intended to be used to delay proceedings indefinitely.” “Reasonable period of time.” Bring it to a close on the merits, plz. [See discussion below for more]

- **Matter of W-Y-U-**, 27 I&N Dec. 17, 17-18 (BIA 2017): Administrative closure is to be “used to temporarily remove a case from an Immigration Judge’s active calendar or from the Board’s docket.” Bring it to a close on the merits, plz.
- **Matter of Sanchez Sosa**, 25 I&N Dec. 807 (BIA 2012): Considering the factors informing a decision whether to delay removal proceedings based on a pending U visa & a continuance request. [See discussion below for more]
- **Matter of J.J. Rodriguez**, 27 I&N Dec. 762, 765-66 (BIA 2020): lawyer’s statements aren’t given evidentiary weight without record evidence.
- **Matter of Gomez-Beltran**, 26, I&N Dec. 765, 771-72 (BIA 2016): “administrative closure would not have been warranted because of the remote availability of a visa and the speculative nature of the respondent’s ability to adjust his status . . .”
- **Matter of Quintero**, 18 I&N Dec. 348, 350 (BIA 1982): “the fact that the respondent has an approved visa petition does not entitle him to delay the completion of deportation proceedings pending availability of a visa number.”
- **Matter of Amico**, 19 I&N Dec. 652, 654 (BIA 1988): quoted on p482 re. avoiding an order of removability.
- **Vahora v. Holder**, 626 F.3d 907, 918 (7th Cir. 2010): a continuance is “the procedural device most closely akin” to administrative closure.
- **Gonzalez v. Cuccinelli**, 985 F.3d 357, 363 (4th Cir. 2021): “far more than 10,000 aliens seek U-Visas. . . . As a result, there is a significant gap between U-Visa petitions that meet the eligibility criteria and petitions that the agency may grant.”
- **Malilia v. Holder**, 632 F.3d 598, 606 (9th Cir. 2011): a respondent “should not have to bear the ultimate cost for USCIS’s insufficiencies.”
- **Hernandez-Serrano v. Barr**, 981 F.3d 459, 463 (6th Cir. 2020): giving admin closure where it’s not warranted is like failing to apply the immigration laws at all.

Relevant U.S. History:

- “Congress has capped the number of U visas that may be granted in any given year at 10,000.” 478
- “At the time we decided *Matter of Sanchez Sosa*, the demand for U visas was dramatically lower than it is today.” 478
- 10,250 pending U visa petitions at the end of 2011
 - “Based on historical denial rates and USCIS’ practice of granting the maximum number of available visas every year, it would have been reasonable to expect that visas for all or most approvable U visa petitions pending at the end of fiscal year 2011 could be issued in fiscal year 2012.” 478-79
- >100,000 pending in 2018 (when this R filed)
- ~250,000 pending in 2026 479

Discussion:Totality of the Circumstances consideration for recalendaring

- “In its motion, DHS explained that the respondent’s U visa petition remained pending and argued that recalendaring was appropriate to resolve the removal proceedings on the merits.” 477
- “When a motion to recalendar is opposed by the nonmoving party, an Immigration Judge must consider the totality of the circumstances in deciding whether to grant the motion as a matter of discretion,” based on factors in regulation.
- *Matter of Sanchez Sosa* at 815, on continuances:
 - “As a general rule, there is a rebuttable presumption that an alien who has filed a prima facie approvable [U visa petition] with the USCIS will warrant a favorable exercise of discretion for a continuance for a reasonable period of time.” 478IV
 - Relevant factors:
 - Prima facie approvability
 - Reasonable time limit
- These factors ^^^ “are consistent with the relevant factors considered in the context of administrative closure and recalendaring.” 478
- Admin Closure factors:
 - Likelihood of success on the pending collateral matter
 - Anticipated duration of admin closure
- Considering the astronomical rise in demand for U Visas and projected wait times of (now) around 25 years, “we conclude that the Immigration Judge erred in denying DHS’ motion to recalendar based on the totality of the circumstances.” 479
- *Matter of B-N-K-* at 100:
 - “whether there are persuasive reasons for a case to proceed and be resolved on the merits is the primary consideration in determining whether administrative closure is appropriate under the totality of the circumstances.” 479IV
- “We have repeatedly held that a party’s interest in bringing removal proceedings to a close on the merits is a persuasive reason to move forward with the case.” 479
- Problems with this R’s case: 479
 - Already admin closed for PD when filed U Visa
 - Admin closed for 13 years with no status to show for it
 - Only submitted receipt notice, not evidence to establish prima facie case / bona fide determination letter / notice of being placed on a wait list. 479-80

Eligibility Factor (Prima Facie Evidence)

- “The absence of evidence demonstrating prima facie eligibility for the collateral benefit sought strongly militates against a grant of administrative closure.” *Matter of Cahuec Tzalam*, 29 I&N Dec. at 304 (quoted here 480).
 - *See also Matter of Sanchez-Sosa*, 25 I&N Dec. at 813-14: continuance sought for U visa should include evidence of prima facie eligibility.

Duration Factor

- “Moreover, even assuming the respondent’s petition is prima facie approvable, there is no indication in the record that a visa would become available ‘**within a reasonably short period of time**’ such that continued closure of these proceedings is warranted.” 480 (quoting *B-N-K-* at 99) (emphasis added)
- “As we have held in analogous contexts, administrative closure is not appropriate if based on a respondent’s potential ability to obtain a visa ‘at some remote time in the future.’” 480 (quoting *Cahuec Tzalam* at 305)
- “The respondent’s present inability to obtain a visa is not the result of any action or inaction by USCIS. There is currently no visa available to her because Congress has only authorized the issuance of 10,000 U visas per year while there are hundreds of thousands of other aliens who have applied for one.” 480-81
- “When . . . a U nonimmigrant visa is not immediately available to a respondent and the record does not establish that one is likely to be available **in the reasonably near future**, administrative closure over DHS’s objection is inappropriate because **it effectively ‘amount[s] to a decision not to apply the Nation’s immigration laws at all.’**” 481 (quoting *Hernandez-Serrano v. Barr*, 981 F.3d 459, 463 (6th Cir. 2020)) (emphasis added).
- “A presumptive 6-month time limit comports with the requirement that administrative closure be ‘temporary’ . . . and prevents its abuse as a ‘facially unlawful’ means to effect the ‘permanent closure’ of removal proceedings.” 482 (citations omitted)

Diatribes about DHS’s Discretion to Prosecute

- Basically, it’s DHS’s prerogative to charge, prosecute, and remove noncitizens, and IJs shouldn’t get in the way by offering them amnesty in the form of admin closure OVER DHS’s OBJECTION. 482
 - [NOTE that it was DHS itself which, in the past, has agreed to and sometimes initiated PD, as in this case...]
- “Administrative closure over DHS’ objection is not appropriate when used simply to enable a removable respondent ‘to avoid an order regarding his [removability], and the consequences an order of [removal] could bring.” *Matter of Amico* at 654 (quoted 482)
- Don’t interfere with DHS’s authority to prioritize removals!! 482
- Watch out for “constitutional issues implicating the separation of powers if the result is to effectively create a form of immigration relief not clearly provided by Congress.” 482

Commentary:

- “Although we do not usually entertain interlocutory appeals, we deem it appropriate to do so here to ensure proper application of the regulations governing the recalendaring of administratively closed cases.” 476

- “The Board and Immigration Judges have no authority to use administrative closure as a de facto extra-statutory form of relief that effectively grants amnesty to thousands of removable aliens because they may be eligible for a visa sometime in the future.” 481
 - Note 2 explains that “DHS does have the authority to offer deferred action against removable aliens who are eligible to receive a U visa but for the cap.”

RESPONSE:

Two prongs: **TIMING** (& whose fault is it that it’s taking so long) & **PRIMA FACIE ELIGIBILITY** (potential success of the case), with **SEPARATION OF POWERS** thrown in as a Constitutional bonus...

- **TIMING & DURATION—whose fault is it??**
- **“Reasonable period of time”** is a subjective determination
 - Note that they’re defining this by 2011-2012 standards in *Matter of Sanchez Sosa*, when it would have been “reasonable” for the pending U visas to have been completed within a year. 478
 - Actually, it’s not even that generous: “A presumptive **6-month time limit** comports with the requirement that administrative closure be temporary.” 482
 - (A 20-year time limit would do the same, FWIW.)
- “Totality of the circumstances” should include the legislative problem of a 10K limit on grants annually as an “exceptional circumstance” beyond the R’s control.
- “reasonable” also connotes “realistic”—what’s a “realistic” delay under the present legislative state of affairs?
- Another factor is whether the R contributed to the delay—here, it’s the US government causing the delay -- **8 C.F.R. § 1003.18(c)(3)(ii)(F)** (“**The responsibility of either party, if any, in contributing to any current or anticipated delay**”).
- This R’s proceedings were originally closed for PD before she filed the U Visa – maybe differentiate re. **PD admin closure** vs. straight-up **procedural admin closure**. See 479.
- Note the attempt to distinguish from *Malilia v. Holder* (pro-FN decision re. USCIS being at fault in processing delays)—480-81. Argue that your case IS analogous to *Malilia* because Congress IS ALSO PART OF THE GOVERNMENT, and it’s their fault, NOT the respondent’s.
 - “The respondent’s present inability to obtain a visa is not the result of any action or inaction by USCIS. There is currently no visa available to her because Congress has only authorized the issuance of 10,000 U visas per year while there are hundreds of thousands of other aliens who have applied for one.” 480-81
- Note the equating of a grant of admin closure with “not applying the immigration laws at all” (from *Hernandez-Serrano v. Barr*, 6th Cir. 2020). 481

- I'd argue that we're working *within the immigration laws as they stand*, and the U Visa cap is part of that package.
- This decision conflates **PD admin closure**—which DHS was on board with in the past, but which created a loophole for the indefinite freezing of removal proceedings—with **procedural admin closure**, which is made necessary because Congress has not acted to relieve the delay in so many of these petitions, applications, and waivers! The former is indeed indefinite; the latter contemplates a *definite* time period, the length of which is *determined by the government itself*.
- **PRIMA FACIE ELIGIBILITY—beef up your opposition to DHS's motion to recalendar!**
- R submitted ONLY a receipt notice for the I-918 in her opposition to DHS's motion to recalendar. 479
 - “She did not submit any other evidence to establish prima facie eligibility for a U visa.” – or a bona fide determination – or notice that she's been put on a wait list. 480
 - Goes to **8 C.F.R. § 1003.18(c)(3)(ii)(D)**: re. the likelihood that the alien would succeed. (*See Cahuec Tzalam* at 304)
- Don't make statements in your opposition that you can't back up with record evidence (like speculating how long the pending application is likely to take). 480
- **NOT TO MENTION SEPARATION OF POWERS:**
- The BIA argues at p.482-83 that there's a danger of Article 2 powers usurping Article 1 powers, if Article 2 judges effectively create a new class of noncitizens by agreeing to admin closure **over the objection** of DHS. HOWEVER, the IJs and DHS have been in agreement about this—in cahoots, one might say—for many non-Trump years, effectively performing an Article 2 end run around the INA through **PD admin closure** grants. But in the case of U Visas and similar relief, the use of administrative closure to EFFECT THE DESIRES OF CONGRESS is frankly the opposite of the conflation of powers. **Procedural Admin Closure** honors the separation of powers by acknowledging the rules that Congress enacted, and by enabling those rules to be actually applied to eligible noncitizens eventually.