



JOHN W. LAWIT, LLC

PO Box 166098
Irving, Texas, 75016
Phone: (214)609-2242

21034

July 7, 2022

Paul B. Hunker III
U.S. Immigration and Customs Enforcement
Office of the Principal Legal Advisor
125 E. John Carpenter Fwy. Suite 500
Irving, TX 75062

RE: Request to Dismiss Removal Proceedings Without Prejudice

Respondent: (Alien's Name) - A #
(Alien's Name) - A #

Delivered via email to ice-opla-dal-pd@ice.dhs.gov

Dear Chief Counsel:

Our office represents Ms. (Alien's Name) and Ms. (Alien's Name) in the above-referenced matter. Their Master Hearing has been scheduled for (Date), at (Time). The purpose of this letter is to request that the Department move to dismiss my clients' removal proceedings without prejudice. In the alternative, the Respondents request that their case be administratively closed, allowing them to pursue relief under U.S. Citizenship and Immigration Services. Our request is consistent with and supported by: the enumerated powers stated in 8 C.F.R. § 1239.2(c) to motion to dismiss removal proceedings, given to ICE in 8 C.F.R. § 239.2(a) by the definition of "officer" in § 239.1(a); the conditions required to invoke said powers which include "circumstances of the case have changed after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the government" which the Respondents' counsel believes applies to Respondents' case *See* 8 C.F.R. § 239.2(a)(7); and ICE's enforcement priorities, acting in accordance with constraints on enforcement and removal actions by limited agency resources, which have greatly reduced ICE's actions against aliens determined to be "low priority".

Respondents, citizens of (Home Country), entered the United States in Miami, Florida on April 1st, 2019. They were admitted under a B2 visitor visa. (Alien's Name) filed an Asylum Application about 7 months after her entry in which her daughter, (Alien's Name), was included, as they reported fearing that they would be harmed in their home country due to political persecution from pro-Maduro organizations. Said request for Asylum is currently pending with this court. (Alien's Name) subsequently met and married Mr. (Name), a United States citizen on November 4th, 2020.

(Alien's Name) United States citizen spouse filed petitions for an Alien Relative on Form I-130 on behalf of (Alien's Name) and (Alien's Name) on November 18, 2021. Said petitions remain pending with the U.S. Citizenship and Immigration Services. Respondents filed their Adjustment of Status Application with the Executive Office for Immigration Review in Dallas, Texas on October 8, 2021. This application remains pending as of the date of this motion. In other words, Respondents have access to immigration relief that may make removal unnecessary and wasteful of limited government resources.

JOHN W. LAWIT, LLC

After the commencement of removal proceedings, the Department may move for dismissal of the case on the grounds set out under 8 C.F.R. § 239.2(a). 8 C.F.R. § 1239.2(c). Dismissal of proceedings under 8 C.F.R. § 1239.2(c) is without prejudice to the respondent and the Department. *Id.* The Department may determine that this case is not an enforcement and removal priority, and therefore the circumstances of the case will have changed after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the government. *See* 8 C.F.R. § 239.2(a)(7).

U.S. Immigration and Customs Enforcement have limited resources to pursue, detain, prosecute, and remove aliens the Department believes are deportable or inadmissible under immigration laws. As such, the Department cannot realistically accomplish its mandate to remove all aliens considered deportable or inadmissible. DHS has long expressed as a policy matter the necessity of exercising its power of prosecutorial discretion to best exercise its immigration enforcement powers and priorities.

As the Department of Justice has explained, and in accordance with the Department of Homeland Security's enforcement priorities and ability to exercise prosecutorial discretion, Immigration Judges "shall seek to resolve the questions before them in a timely and impartial manner consistent with the Act and regulations." *See* 8 CFR §1003.10(b). Judges are also, under EOIR PM 21-25, "encouraged to use all docketing tools available to them to ensure the fair and timely resolution of cases before them."

When deciding whether or not to exercise its authority to dismiss removal proceedings, ICE must take into account at least several additional factors. The negative factors which may prohibit the Department from exercising discretion often include a credible threat to public safety or national security; previous human rights abuses or persecution; previous immigration violations such as unauthorized entries or prior deportations; and criminal convictions.

Respondents have no criminal background. Respondents have never been suspected of terrorism or other related activities which may pose a threat to national security or public safety. Respondents have never engaged in persecution or human rights abuse. Respondents have no immigration violations.

Under any reasonable criteria that may be in effect, Mrs. (Alien's Name) and Ms. (Alien's Name) are unequivocally not an enforcement priority. See Attachment for Respondent's Supporting Documents, including evidence of their Pending Adjustment of Status Application. As there are no severe adverse factors that overturn the presumption that prosecutorial discretion is merited, and additional positive factors only make the case for prosecutorial discretion more compelling, the ICE should exercise prosecutorial discretion in their case. In compliance with ICE's authorized use of prosecutorial discretion and the DHS's stated goal of prioritizing limited resources, OCC should move to dismiss Mrs. (Alien's Name) and Ms. (Alien's Name)'s removal proceedings without prejudice. Respondents respectfully request that ICE join them in the Joint Motion to Dismiss Proceedings without Prejudice.

Thank you for taking the time to consider this information. Feel free to contact my office if you require any additional information.

Kind regards,

John W. Lawit
Attorney
JWL/hjh