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Is the new rule created with the purpose of setting the E-2 applicants on the path of failure? If so, it inevitably would deny foreign investors the opportunity to develop a successful business and lose the substantial investment already put at risk in a U.S. company. Thus far, it is not clear what is the exact purpose or the intent of the embassies that have the page limitation rule. Let's hope that the purpose is to minimize and simplify the process of obtaining the E-2 visa. Unfortunately, based on the nature of the E visa requirements and the necessary evidence, this new rule makes an immigration attorney's work extremely difficult in providing adequate representation for business clients.

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Seeking Termination vs. Administrative Closure

by Olsa Alikaj-Cano

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 and Termination of Proceedings are both outcomes that may be realized through the exercise of prosecutorial discretion or upon the motion of either party. Knowing when and how to request each one is crucial for helping clients placed in removal proceedings.

Administrative Closure, 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 DHS. If DHS does not agree, you

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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. The factors in *Matter of Avetisyan* are 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. The evidence of strong family ties, economic ties, social ties, special talents

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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 will 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.

Olsa Alikaj-Cano joined the litigation team of FosterQuan LLP, in its Houston office in 2010. She is an active member of the American Immigration Lawyers Association, and she currently serves as the AILA Texas Chapter New Members Division Liaison. She focuses primarily on cases involving federal litigation as well as cases with removal and deportation issues before the Executive Office of Immigration Review.

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