

Continuances in Immigration Court: Legal Standards, Good Cause Requirements, Considerations, and Procedural Framework

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FINDINGS

CONTINUANCES IN IMMIGRATION COURT: LEGAL STANDARDS, GOOD CAUSE REQUIREMENTS, STRATEGIC CONSIDERATIONS, AND PROCEDURAL FRAMEWORK

This report examines the legal and procedural framework governing continuances in removal proceedings under the Immigration and Nationality Act, with particular emphasis on the "good cause" standard established by 8 C.F.R. § 1003.29, the controlling precedent in *Matter of L-A-B-R-*, 27 I&N Dec. 405 (A.G. 2018), and recent Board of Immigration Appeals decisions that have refined continuance doctrine. Continuances remain a critical procedural mechanism for respondents seeking time to secure legal representation, pursue collateral relief, or gather evidence, but the legal standard has become progressively more restrictive since 2018. This report provides immigration practitioners with detailed analysis of when continuances may be granted, what factors immigration judges must consider, how to effectively present continuance motions, and how recent appellate decisions have altered the continuance landscape. The report further addresses the empirical evidence demonstrating that continuance length directly correlates with respondents' ability to secure counsel and avoid removal, creating tension between judicial efficiency and fair procedural access. Additionally, the report examines strategic considerations specific to removal proceedings in the Ninth Circuit and Northern California immigration courts, where distinct judicial preferences and procedural practices influence continuance outcomes.

Legal Framework and Statutory Authority

Regulatory Foundation and Statutory Basis

The authority for immigration judges to grant continuances rests on 8 C.F.R. § 1003.29, which states that "[t]he immigration judge may grant a motion for continuance for good cause shown, provided that nothing in this section shall authorize a continuance that causes the adjudication of an asylum application to exceed 180 days in the absence of exceptional circumstances, consistent with section 208(d)(5)(A)(iii) of the Act." [1] This regulation contains two essential limitations: the requirement of "good cause" and the temporal constraint on asylum adjudication. The statute upon which these regulations rest is 8 U.S.C. § 1229b(d)(1), which delegates to the Attorney General authority to establish procedures for removal hearings, including the authority to prescribe when continuances may be granted. [7] The underlying Immigration and Nationality Act imposes a statutory mandate that asylum applications be "completed within 180 days after the date an application is filed" absent "exceptional circumstances," establishing a floor below which continuances may not extend the adjudication timeline. [8]

The regulatory language "for good cause shown" is notably undefined in the Immigration and Nationality Act or its implementing regulations. This lack of statutory or regulatory definition necessitated development by the Board of Immigration Appeals beginning in the 1980s, with subsequent refinement by the Attorney General. The regulatory standard thus represents an area of administrative law where courts and the Board have had substantial room to develop doctrine, and where recent precedent has substantially narrowed the discretion immigration judges previously exercised.

Key Statutory Provisions Affecting Continuances

Several statutory provisions directly or indirectly affect continuance analysis. INA § 208(d)(5)(A)(iii), codified at 8 U.S.C. § 1158(d)(5)(A)(iii), mandates completion of asylum adjudication within 180 days absent

exceptional circumstances. INA § 240, codified at 8 U.S.C. § 1229a, establishes the framework for removal proceedings and provides that removal proceedings must be "conducted as expeditiously as possible." [1][8] INA § 245, codified at 8 U.S.C. § 1255, governs adjustment of status and requires that visa numbers be "immediately available" at the time an adjustment application is filed—a requirement that substantially constrains continuances awaiting visa availability. [3] The statutory requirement of immediate visa availability means that speculation about future visa availability generally cannot support a continuance motion.

The Good Cause Standard and Multifactor Balancing Test

Origins and Development of the Good Cause Standard

Prior to 2018, the Board of Immigration Appeals articulated a multifactor test for evaluating continuances in cases involving collateral immigration relief. In *Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009), the Board identified five factors immigration judges should consider: (1) the Department of Homeland Security's response to the motion; (2) whether the underlying visa petition is prima facie approvable; (3) the respondent's statutory eligibility for adjustment of status; (4) whether the respondent's application for adjustment of status merits favorable exercise of discretion; and (5) the reason for the continuance and other relevant procedural factors. [39][42] The Board further held that "if the DHS does not oppose a continuance, the proceedings ordinarily should be continued by the Immigration Judge in the absence of unusual, clearly identified, and supported reasons for not doing so." [21] This formulation placed significant weight on whether DHS affirmatively consented to the continuance.

The Board extended this framework to employment-based visas in *Matter of Rajah*, 25 I&N Dec. 127 (BIA 2009) and to U visa petitions in *Matter of Sanchez Sosa*, 25 I&N Dec. 807 (BIA 2012), with consistent emphasis on prima facie approvability and the likelihood that collateral relief would materially affect the removal proceedings outcome. [20][21][34]

Attorney General L-A-B-R- Decision and Narrowing of Discretion

On August 16, 2018, Attorney General Jefferson Sessions issued *Matter of L-A-B-R-*, 27 I&N Dec. 405 (A.G. 2018), a precedent decision that substantially restructured continuance doctrine. [3][31] The Attorney General held that immigration judges should assess good cause for continuances awaiting collateral matters through a multifactor analysis, but emphasized that "an immigration judge considering a motion for continuance to await the resolution of a collateral matter must focus principally on two factors: (1) the likelihood that the alien will receive the collateral relief, and (2) whether the relief will materially affect the outcome of the removal proceedings." [31][34] The decision explicitly stated that these two factors should be given greater weight than secondary factors.

Secondary factors identified in *L-A-B-R-* include: (1) whether the respondent exercised reasonable diligence in pursuing collateral relief; (2) DHS's position on the motion for continuance; (3) administrative efficiency concerns; (4) the length of the requested continuance; and (5) the procedural history of the case. [3][31][34][44] Critically, the Attorney General emphasized that DHS's consent to a continuance "is not a sufficient basis for granting a continuance," and that immigration judges must "avoid improperly shifting the burden to DHS to demonstrate the absence of good cause." [3][31][34] This represented a significant departure from the *Hashmi* framework, which had given substantial weight to DHS non-opposition.

The *L-A-B-R-* decision emphasized administrative efficiency as an explicit consideration, stating that continuances must be evaluated in light of "the public interest in expeditious enforcement of the immigration laws, as well as the tendency of unjustified continuances to undermine the proper functioning of our

immigration system." [31][34] The Attorney General further noted that "continuances are themselves intended to promote efficient case management," placing the burden on respondents to demonstrate how continuances serve efficiency rather than merely delay proceedings. [31]

Situational Examples of Good Cause Failure

The L-A-B-R- decision identified several circumstances where good cause does not exist. When a respondent seeks a continuance to apply for a provisional unlawful presence waiver from USCIS, good cause is lacking because respondents are statutorily ineligible for such waivers while removal proceedings are pending. [31] When a respondent's collateral submission has already been denied and there are no relevant changed circumstances, continuances should be denied. [31] When a visa priority date is "too remote to raise the prospect of adjustment of status above the speculative level," good cause does not exist, though the decision acknowledged that case law had not definitively established when a priority date becomes "too remote." [20][28][58] When an immigration judge concludes that even if USCIS approved the respondent's visa petition, the respondent would be statutorily ineligible for adjustment or the immigration judge would deny adjustment as a discretionary matter, good cause for a continuance does not exist. [31]

Specific Grounds That May Support Continuances

Lack of Legal Representation

One of the most straightforward grounds for granting a continuance is the respondent's lack of legal representation at the initial master calendar hearing. 8 C.F.R. § 1240.4 provides that when an unrepresented immigrant appears without expressly waiving the right to counsel, the immigration judge must grant a continuance allowing reasonable time to secure an attorney. [15][19] However, the regulations and case law do not specify what constitutes a "reasonable period" of time, creating ambiguity that has permitted wide variation among immigration courts and judges. [15]

Empirical research examining EOIR scheduling data from 2007-2015 revealed substantial variation in continuance length across courts. Different immigration courts granted dramatically different initial continuances for unrepresented respondents, with average first continuances in Chicago exceeding 150 days while other courts granted far shorter periods. [15][19] This research demonstrated that continuance length has profound effects on outcomes: "increasing the time between the first and second hearing from one to two months doubled children's and families' chances of finding a lawyer." [15][19] Moreover, respondents granted longer initial continuances were substantially more likely to obtain representation and ultimately avoid deportation, while shorter continuances restricted access to counsel and increased deportation rates. [15][19]

The research further demonstrated that approximately 37 percent of all immigrants, and merely 14 percent of detained immigrants, secured representation in immigration proceedings. [22] Of those obtaining representation, only 2 percent obtained pro bono representation from nonprofit organizations, law school clinics, or large law firm volunteer programs. [22] The barriers to accessing counsel were particularly acute in immigration courts located in rural areas and small cities, where nearly one-third of detained cases were adjudicated. [22] Critically, the research showed that "immigrants with attorneys in immigration court do better: after controlling for numerous case and respondent characteristics that could affect case outcomes, our regression analysis reveals that the odds are 15 times greater that an immigrant with representation, as compared to one without, sought relief, and 5.5 times greater that they obtained relief from removal." [22]

Despite this empirical evidence, recent BIA precedent has restricted continuances for lack of counsel. In *Matter of J-A-F-S-*, 29 I&N Dec. 195 (BIA 2025), decided just weeks before this report's preparation date, the

BIA held that "an immigration judge should not continue an individual hearing based on a respondent's speculative assertion that he or she may be eligible for a form of new relief from removal not previously raised." [32][50] While that decision specifically addressed continuation for investigative purposes, it signals the BIA's current restrictive approach to continuances generally, particularly where a respondent has been in removal proceedings for an extended period.

Medical and Hardship Grounds

Immigration judges may grant continuances based on extreme hardship to the respondent or immediate family members, provided the hardship is documented through medical evidence, psychological evaluations, or other credible documentation. [9] The Framework Manual does not establish a bright-line rule for what constitutes sufficient medical hardship, but practitioners have successfully obtained continuances where respondents face urgent medical procedures, terminal diagnoses affecting family members, or psychological conditions requiring documented treatment. [9]

When pursuing a hardship continuance, practitioners should gather medical documentation from treating physicians, including prognosis statements, treatment plans, and functional impact assessments. Psychological evidence proving depression, anxiety, or trauma-related conditions can strengthen hardship arguments, particularly where expert witnesses are available to testify regarding the psychological impact of removal on family members. The procedural requirement that medical evidence be attached to the continuance motion is critical; oral assertions of hardship without supporting documentation rarely suffice.

Pending Collateral Immigration Matters

The largest category of continuance requests involves pending collateral immigration matters-visa petitions, labor certifications, U visa applications, T visa applications, and other benefits adjudicated by USCIS rather than immigration courts. [31][34][42] The L-A-B-R- framework substantially constrained these continuances by requiring immigration judges to focus principally on the likelihood of success and material impact rather than treating pending petitions as presumptively justifying continuances.

For family-based visa petitions, the respondent must establish prima facie approvability, which requires demonstrating that the petition is properly filed, the petitioner is qualified to sponsor, the beneficiary meets eligibility requirements, and no bars to adjustment exist. [3][31] Simply filing a Form I-130 or Form I-140 does not automatically demonstrate prima facie approvability; the immigration judge must evaluate whether the petition would likely be approved if adjudicated by USCIS. Respondents should submit copies of the complete visa petition, evidence of the sponsoring relative's income, and documentation of any family relationships claimed.

For U visa applications, respondents must establish that they are prima facie eligible-that they suffered battery, extreme cruelty, trafficking, or other qualifying crimes; that they have information concerning the criminal activity; and that they are willing to cooperate with law enforcement. [51][54] Critically, in *Matter of L-N-Y-*, 27 I&N Dec. 755 (BIA 2020), the BIA held that "prima facie eligibility for relief is not dispositive regarding a motion for continuance where other factors weigh against continuing the proceedings," meaning that even respondents with approved or prima facie eligible U visas may be denied continuances if administrative efficiency or diligence factors weigh heavily against delay. [20][51][54] The BIA gave significant weight to delays between the qualifying crime and U visa application, suggesting that respondents must act diligently in pursuing U visa relief rather than filing years after the qualifying event.

Employment-Based Visa Continuances

When respondents have pending employment-based visa petitions or labor certifications, continuances present particular difficulties because the adjustment of status timeline depends entirely on USCIS processing, which immigration judges cannot control. The respondent must establish that a labor certification is pending or an I-140 petition is prima facie approvable, and that the respondent's place in the adjustment of status process is proximate enough to make the continuance non-speculative.[31][42] A respondent who has not yet begun the labor certification process, or whose employment-based petition is at the earliest stages, will have difficulty establishing good cause, because visa availability for many employment categories is years or decades away.

The requirement of "immediate visa availability" for adjustment of status creates a substantial obstacle for employment-based continuances, because INA § 245(a), 8 U.S.C. § 1255(a), requires that visa numbers be immediately available when the adjustment application is filed. This means that respondents cannot establish good cause for continuances awaiting the advent of immediate visa availability; the visa number must already be currently available or become available within a timeframe close enough that adjustment is non-speculative.[3][20][28][58] The Board has held that visa priority dates "years in advance of current visa availability" do not support continuances.[58]

Visa Priority Date Remoteness

A recurring problem in continuance practice involves respondents with approved visa petitions but visa priority dates that are years away from becoming current. In *Matter of Rajah*, 25 I&N Dec. 127 (BIA 2009), the BIA held that "a respondent who has a prima facie approvable I-140 and adjustment application may not be able to show good cause for a continuance because visa availability is too remote." [20][28] However, the BIA has never defined precisely when a priority date becomes "too remote," leaving immigration judges with substantial discretion in making these determinations.

Practitioners confronted with visa priority date arguments should gather evidence of recent movement in the applicable visa category from the State Department Visa Bulletin, attempting to demonstrate that recent movement suggests the visa will become available within a relatively proximate timeframe. However, as one practitioner analysis notes, the Visa Bulletin does not provide projections about future availability, and recent movement does not reliably predict future movement, particularly given retrogression in certain categories.[55] Until the Board provides more guidance on what constitutes "too remote," practitioners must advocate vigorously that recent favorable movement in the visa category demonstrates reasonable proximity to immediate visa availability.

Procedural Requirements and Motion Practice

Filing Requirements and Deadlines

Continuance motions must be submitted in writing, with oral motions discouraged.[13][30] The EOIR Immigration Court Practice Manual, Chapter 5.10(a), requires that "a request for a continuance of any hearing should be made by written motion." [30] The motion must "set forth in detail the reasons for the request and, if appropriate, be supported by evidence," and "should also include the date and time of the hearing, as well as preferred dates that the party is available to re-schedule the hearing." [13][30] Parties must recognize that "the immigration court retains discretion to schedule continued cases on dates that the court deems appropriate," so while practitioners should suggest preferred dates, immigration judges are not bound by those suggestions.[30]

Under EOIR Policy Manual Chapter 3.1, motion deadlines vary depending on the procedural posture. For master calendar hearings involving represented non-detained respondents, if the Form EOIR-28 is filed at least

15 days prior to the hearing, the hearing will be vacated and the immigration judge will issue a scheduling order.[46] For individual calendar hearings involving represented non-detained respondents, amendments to applications and other documents must be submitted at least 30 days in advance of the hearing.[46] 8 C.F.R. § 1240.17(h)(2), addressing the special expedited procedures for defensive asylum cases, allows respondent-requested continuances of no more than 10 calendar days per continuance unless the respondent demonstrates that a longer continuance is necessary to ensure fair proceedings and is limited to at most 135 days from the master calendar hearing.

The requirement that continuance motions comply with filing deadlines is strictly enforced. Untimely-filed motions may be deemed abandoned or waived, and the filing of a motion to continue does not excuse the respondent or practitioner from appearing at the scheduled hearing unless and until the immigration judge grants the motion.[13][30] This creates a procedural trap: respondents who file continuance motions must still appear at the hearing at the date and time set in the original Notice to Appear, or face potential in absentia removal orders that cannot be appealed.

Supporting Documentation and Evidence

The L-A-B-R- decision emphasized that "the respondent must provide evidentiary submissions about the 'collateral' proceeding to support the continuance request, as discussed in greater detail in part III below," including "copies of relevant submissions in the collateral proceeding, supporting affidavits, and the like." [31][34][44] A continuance motion supported only by conclusory assertions-without documentation from treating physicians, copies of visa petition receipts, certified criminal conviction documents, or other tangible evidence-is likely to be denied.

For continuances based on collateral immigration benefits, practitioners should attach: (1) USCIS receipt notices (Form I-797) showing the pending benefit; (2) copies of the complete petition or application filed with USCIS; (3) evidence that the petition is prima facie approvable, such as income documentation for the sponsoring relative, birth certificates, marriage certificates, or employment letters; and (4) any correspondence from USCIS regarding the petition's adjudication status. For U visa applications, attach certified copies of law enforcement certifications (Form I-918B), the completed U visa petition, and evidence of the qualifying crime through police reports or court documents.

For medical hardship continuances, attach medical reports from treating physicians describing the condition, recommended treatment, prognosis, and functional limitations. Psychological evaluations should be provided for claims involving mental health conditions affecting the respondent or family members. Affidavits from family members, employers, or community members can supplement documentary evidence, though they should be supported by personal knowledge and contain specific factual assertions rather than generalized endorsements.

Burden and Standards of Proof

The respondent seeking a continuance bears the burden of demonstrating good cause.[3][31][34] Unlike in some civil proceedings, the burden does not shift to DHS to disprove good cause; rather, the respondent must affirmatively establish the requisite factors through evidence and legal argument. Immigration judges must provide reasoned explanations on the record when granting continuances, "evaluating and balancing the relevant good-cause factors." [3][31][34] This requirement means that immigration judges cannot grant continuances summarily but must articulate on the record which good-cause factors support the motion and how they outweigh contrary considerations.

The 180-Day Asylum Adjudication Deadline

Statutory Framework and Policy Evolution

Asylum applications present a unique continuance situation due to the statutory 180-day completion deadline. INA § 208(d)(5)(A)(iii), 8 U.S.C. § 1158(d)(5)(A)(iii), mandates that "in the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within 180 days after the date an application is filed." [1] Additionally, 8 C.F.R. § 1003.29 provides that continuances "shall authorize a continuance that causes the adjudication of an asylum application to exceed 180 days in the absence of exceptional circumstances." [1]

The EOIR has issued policy guidance addressing the 180-day deadline. Through Policy Memo 19-05, issued in November 2018 under the Trump administration, the EOIR Director announced that asylum applications must be adjudicated "within 180 days to the maximum extent practicable," and opined that "good cause that warrants a continuance in general does not necessarily-and in every case-constitute exceptional circumstances" justifying exceeding the deadline. [8] However, that memo was rescinded on April 18, 2022 by EOIR Director's Memorandum 22-05, issued by the Biden administration, which removed many of the Trump-era restrictions on continuances. [8]

The current legal position, as of February 2026, reflects the Biden administration's rescission of Trump-era continuance restrictions, but the statutory 180-day deadline remains in force. Continuances cannot be extended beyond 180 days absent "exceptional circumstances," though the regulations and case law have not clearly defined what constitutes "exceptional circumstances" warranting exceptions to the deadline. Some immigration judges interpret the deadline permissively, allowing continuances that extend adjudication slightly beyond 180 days if exceptional circumstances such as death of counsel, serious illness, or extraordinary delay by USCIS are demonstrated. Others apply the deadline strictly.

Work Authorization Implications

The 180-day asylum deadline has profound implications for work authorization eligibility. Asylum applicants become eligible to apply for an Employment Authorization Document (EAD) after 150 days have accrued on their "asylum clock," and can receive an EAD after 180 days have accrued. [33][36] Critically, if an immigration judge denies an asylum application before the respondent has accrued 180 days on the asylum clock, the respondent is ineligible for work authorization, even if the respondent appeals the immigration judge's decision to the BIA. [33][36]

Continuances requested by the respondent stop the asylum clock. If a respondent requests a continuance to find an attorney, this stops the clock from running. [36] Similarly, declining an expedited hearing offered by the immigration judge stops the clock. [36] This creates a significant strategic consideration: while longer continuances improve respondents' chances of securing counsel and obtaining relief, they also delay work authorization eligibility. Respondents must carefully weigh the benefits of additional preparation time against the cost of delayed work authorization eligibility.

Strategic Considerations and Timing Constraints

First Continuance Expectations and Subsequent Difficulty

Immigration judges grant initial continuances to unrepresented respondents as a matter of course at master calendar hearings, without detailed inquiry into the specific facts or merits of the case. [15] This routine grant of first continuances reflects judicial recognition that due process requires opportunity to secure counsel

before removal adjudication. However, immigration judges scrutinize subsequent continuance requests much more carefully, evaluating the specific grounds claimed and considering whether prior continuances demonstrate that additional time is warranted.[3][31][34]

Practitioners should recognize that while the first continuance is highly likely to be granted, each subsequent continuance requires increasingly strong justification. Immigration judges note the number of prior continuances granted and view repeated requests as potential dilatory tactics.[31][34][50] The procedural history factor in the L-A-B-R- analysis explicitly includes consideration of "the history and number of continuances being granted by the Immigration Judge," and the BIA has emphasized that multiple continuances raise administrative efficiency concerns.[31]

Continuance Length and Empirical Effects on Outcomes

The empirical research examining continuance effects represents perhaps the most important strategic consideration. Research examining EOIR scheduling data for nearly one million immigration cases from 2007-2015 demonstrated that "increasing the time between the first and second hearing from one to two months doubled children's and families' chances of finding a lawyer." [15][19] More broadly, the research found that "holding caseload and judge constant, more time leads to a better chance of finding a lawyer and avoiding deportation," with the effect being particularly pronounced for shorter durations (the improvement from 30 days to 60 days was larger than from 90 days to 120 days).[15][19]

This empirical evidence conflicts directly with the administrative efficiency rationale animating the L-A-B-R- framework. The research demonstrates that longer initial continuances-particularly those of at least 90 days-substantially increase immigrants' likelihood of securing counsel and ultimately obtaining relief. Yet the L-A-B-R- framework emphasizes administrative efficiency as a factor weighing against continuances, and the BIA has suggested that administrative efficiency concerns are heightened when respondents request continuances of indefinite or extended length.[31][50]

The research further demonstrated substantial variation among judges in continuation practices. "IJs who allow longer continuances are less likely to have ordered children and families deported at their second hearing." [15][19] This variation persists even when controlling for individual judge effects, suggesting that judges' philosophies about continuance length directly affect outcomes. Some judges appear to understand that longer continuances improve respondents' chances of securing representation and relief, while other judges treat continuances primarily as mechanisms for docket management and prioritize expeditious resolution.

Strategic Framework for Continuance Requests

Given the L-A-B-R- framework and subsequent case law, practitioners should approach continuance motions with the following strategic framework:

First, clearly identify the primary good-cause factor supporting the continuance. Is the respondent seeking time to secure counsel? Is the respondent awaiting adjudication of a pending collateral benefit such as a U visa petition? Is the respondent pursuing a criminal conviction modification that may eliminate deportability? The motion should lead with the strongest factor and supporting evidence.

Second, candidly assess the likelihood that the collateral matter will succeed. For visa petitions, can prima facie approvability be established? For U visas, what is the current USCIS processing timeline, and has the respondent already been approved for a U visa and placed on the waitlist, or is the petition still pending initial adjudication? Immigration judges are sophisticated in evaluating likelihood of success; unrealistic claims harm credibility.

Third, provide evidence of diligence. When did the respondent begin pursuing the collateral relief? For U visas, this is critical-the L-N-Y- decision gave significant weight to delays between the qualifying crime and visa application, suggesting that applications filed years later lack diligence.[51][54] For visa petitions, demonstrate that the respondent or family members have taken active steps to pursue the petition.

Fourth, explicitly address administrative efficiency by explaining how the continuance serves efficiency. For example, if the alternative is denying the continuance and issuing a removal order, explaining that the respondent will likely file a motion to reopen if collateral relief is subsequently approved suggests that denying the continuance creates future inefficiency. If the respondent has been in proceedings for a brief period, argue that early resolution of collateral matters promotes ultimate case efficiency.

Fifth, request a specific continuance period rather than an indefinite continuance. Immigration judges are more receptive to requests for defined periods (e.g., 90 days) than requests for indefinite continuances pending USCIS adjudication. This demonstrates diligence in case management and suggests that the respondent's timeline is realistic.

Judge-Specific and Court-Specific Variation

Practitioners in Northern California should recognize that San Francisco Immigration Court judges vary substantially in their approach to continuances. Some judges grant initial continuances routinely and are receptive to subsequent continuances for collateral matters, particularly visa petitions. Other judges are restrictive, viewing continuances as dilatory tactics and emphasizing expeditious case resolution. Knowledge of individual judge preferences-obtainable through practitioner networks, observing court proceedings, and reviewing available decisions-is critical to effective continuance strategy.

The Ninth Circuit has established standards of review for continuance denials that permit substantial judicial discretion. In *Ahmed v. Holder*, 569 F.3d 1009 (9th Cir. 2009), the Ninth Circuit held that "the decision to grant or deny a continuance is in the sound discretion of the [IJ] and will not be overturned except on a showing of clear abuse." [45] The court identified factors to consider: "(1) the nature of the evidence excluded as a result of the denial of the continuance, (2) the reasonableness of the immigrant's conduct, (3) the inconvenience to the court, and (4) the number of continuances previously granted." [45][48] Under this standard, immigration judges' denials of continuances receive substantial deference, making it difficult to successfully appeal denial decisions.

Judicial Discretion and Appellate Review Standards

Standards of Review at the Board of Immigration Appeals

When a respondent appeals an immigration judge's denial of a continuance motion to the Board of Immigration Appeals, the BIA applies de novo review to whether the immigration judge correctly applied the legal standard for good cause, but reviews factual findings for clear error.[38][41] This means that if the legal standard was misapplied-for example, if an immigration judge failed to consider relevant L-A-B-R- factors-the BIA can reverse. However, if the immigration judge's factual findings are supported by the record evidence, the BIA will not disturb them.

The burden of demonstrating clear error is substantial. The respondent must show that the BIA is left with "the definite and firm conviction that a mistake has been committed." [38][41] The BIA defers substantially to immigration judges' discretionary determinations, and will reverse denials of continuances only if the record clearly establishes that the immigration judge abused discretion by failing to apply the proper legal standard or by findings that are clearly erroneous.

Preservation of Issues for Appeal

Practitioners should recognize that continuance motions often become moot by the time cases reach appellate review. If a continuance is denied, the respondent proceeds to hearing, receives a removal order, and appeals that order. By then, the issue that prompted the continuance request-whether more time to secure counsel, obtain evidence, or pursue collateral relief-has typically been resolved. The BIA therefore often dismisses continuance-related arguments as moot. This creates a strategic problem: practitioners cannot easily obtain appellate review of continuance denials, because the denial is superseded by the merits decision.

To preserve continuance issues for appeal, practitioners should clearly articulate on the record the specific prejudice resulting from the continuance denial. For example, if a continuance is denied and the respondent cannot present evidence or witnesses as a result, the denial may affect the immigration judge's decision on the merits and thus be preserved for appeal. If, however, the denial does not affect the substantive outcome-because the respondent presented all available evidence despite the shortened timeframe-the issue may be deemed harmless.

Federal Court Review of Continuance Denials

Federal courts reviewing immigration judge decisions through habeas corpus petitions or Administrative Procedure Act challenges apply highly deferential review to continuance denials. The Ninth Circuit has held that it will reverse an immigration judge's continuance denial only upon a showing of clear abuse of discretion, and that abuse is unlikely to be found unless the denial results in fundamental unfairness preventing the respondent from reasonably presenting her case.[45][48][49] As one Ninth Circuit decision stated, "we have repeatedly warned that 'a myopic insistence upon expeditiousness' will not justify the denial of a meritorious request for delay," but this warning is applied rarely in practice.[48]

The practical upshot is that continuance denials are very difficult to challenge on appeal. Respondents and practitioners must focus efforts on presenting compelling continuance motions at the immigration court level, supported by evidence and articulate legal arguments. Appellate review of continuance decisions is unlikely to provide relief unless the immigration judge committed clear legal error in the standard applied.

Recent Developments and Current Legal Landscape as of February 2026

Matter of L-N-Y- and U Visa Continuance Doctrine

In *Matter of L-N-Y-*, 27 I&N Dec. 755 (BIA 2020), the BIA applied the L-A-B-R- framework to U visa continuances, holding that immigration judges should consider prima facie eligibility and material effect as primary factors, along with diligence, administrative efficiency, and DHS's position as secondary factors.[6][20][51][54] The BIA held that even respondents with prima facie eligible U visas may be denied continuances if they failed to exercise diligence in pursuing the visa or if administrative efficiency concerns are substantial.

The L-N-Y- decision has proven controversial among immigration advocates, who argue that the BIA failed to adequately consider Congressional intent that U visa relief should be available to crime victims regardless of immigration status, and that deferring to DHS positions on continuances conflicts with law enforcement agency guidance encouraging cooperation through U visa relief.[51][54] Practitioners representing U visa applicants should make Congressional intent arguments in continuance motions, emphasizing that Congress established the U visa category specifically to encourage cooperation by protecting victims from deportation, and that denying continuances forces respondents to choose between obtaining deportation relief and cooperating with law enforcement.

Matter of J-A-F-S- and Speculative Relief

The most recent significant BIA decision on continuances, *Matter of J-A-F-S-*, 29 I&N Dec. 195 (BIA 2025), issued in January 2025, tightened continuance standards further. The BIA held that "an immigration judge should not continue an individual hearing based on a respondent's speculative assertion that he or she may be eligible for a form of new relief from removal not previously raised."^[32]^[50] The respondent in that case had been in removal proceedings for more than a decade and sought a continuance to investigate potential eligibility for special rule cancellation of removal and to obtain criminal history records. The BIA reversed the immigration judge's grant of the continuance, emphasizing that the respondent's eligibility for relief was "highly speculative" because the respondent had not previously raised the issue, had not presented evidence demonstrating diligence in pursuing relief, and had failed to obtain readily-available criminal records prior to the scheduled hearing.^[32]^[50]

The *J-A-F-S-* decision signals that the BIA will apply increasingly restrictive standards to continuances as cases progress. Respondents in the individual hearing stage who have been in proceedings for extended periods will have particular difficulty obtaining continuances, particularly where the relief claimed is newly-asserted. Practitioners must demonstrate that relief claims were raised earlier in proceedings and that diligent efforts to pursue relief have been undertaken.

Biden Administration's 2024 Withdrawal of Trump-Era Proposed Continuance Rules

On December 31, 2024, the EOIR withdrew its Notice of Proposed Rulemaking on "Good Cause for a Continuance in Immigration Proceedings," which had been proposed under the Trump administration on November 27, 2020.^[2] That proposed rule would have substantially narrowed continuance grounds by defining good cause to require demonstration of "a particular and justifiable need," and would have excluded continuances for seeking parole, deferred action, prosecutorial discretion, or visa processing unless specified conditions were met.^[2] The withdrawal suggests that the current administration does not intend to further codify narrow continuance standards through regulation, though the *L-A-B-R-* and *L-N-Y-* precedents remain in effect.

Prosecutorial Discretion and Continuances

Separately from judicial continuances, DHS may grant continuances or administrative closure through exercise of prosecutorial discretion. The June 4, 2021 OPLA Memo, issued by the Office of the Principal Legal Adviser, directs ICE attorneys that "in general, ICE attorneys should not oppose motions to continue if a person does not fall within one of the 'priority enforcement categories.'"^[56] This guidance suggests that non-priority respondents may obtain DHS agreement to continuances even if good cause is questionable. However, practitioners should note that as of January 2026, the previous Doyle memo on prosecutorial discretion no longer applies, and no formal replacement guidance has been issued, creating uncertainty about current DHS continuance policy.

San Francisco-Specific Context and Implementation

San Francisco Immigration Court Procedural Practices

San Francisco Immigration Court operates three hearing locations: the main court at 100 Montgomery Street and 630 Sansome Street in San Francisco, and a satellite facility in Concord. The court's procedures for continuance motions are governed by the EOIR Immigration Court Practice Manual, though individual judges may have specific local practices. Some San Francisco judges require that continuance motions be filed at least 10 days before the scheduled hearing, though this deadline is not universally enforced.

The San Francisco Asylum Office, which adjudicates affirmative asylum applications, has particular significance because defensive asylum applicants in removal proceedings often pursue parallel affirmative applications while in court proceedings. Immigration judges must be aware that USCIS processing times for asylum applications have extended significantly, particularly for requests for evidence (RFEs). Continuance requests based on pending affirmative asylum applications should address whether the affirmative application is within the USCIS 180-day adjudication window or has been pending beyond the statutory deadline.

Judge-Specific Preferences in Northern California

While specific judge identities and practices should be researched through current practitioner networks and EOIR records, Northern California immigration judges vary in their approach to continuances. Some judges in San Francisco are known to be receptive to continuances for visa petitions and U visa applications, particularly where prima facie eligibility has been established. Other judges emphasize expeditious case resolution and grant continuances reluctantly, viewing them primarily as tools for securing counsel. Practitioners should research individual judge panels before filing continuance motions and tailor arguments to specific judge philosophy.

Interaction with California State Law

Northern California practitioners should be aware of California state law provisions affecting immigration proceedings. California Penal Code § 1473.7 permits vacatur of certain criminal convictions based on immigration consequences, and PC § 1203.43 permits modification of sentences to avoid immigration consequences. Continuances may be appropriate to pursue post-conviction relief in state court, which can eliminate deportability grounds. However, immigration judges sometimes deny such continuances as speculative, particularly if the post-conviction relief appears unlikely.

California's SB 54 ("California Values Act") limits state law enforcement cooperation with federal immigration enforcement, but this does not directly affect continuance motions in federal immigration court. However, it may affect DHS positions on continuances by reducing local law enforcement pressure on federal prosecutors.

Collateral Immigration Matters and Prima Facie Eligibility Assessment

Framework for Prima Facie Eligibility Analysis

Under the L-A-B-R- framework, a critical component of good cause analysis is whether the respondent has demonstrated prima facie eligibility for the collateral relief claimed. Prima facie eligibility means that, based on the facts presented, the respondent appears eligible for the relief even if all claims are not fully adjudicated. For family-based visa petitions, prima facie eligibility requires evidence that: (1) the petitioner is a qualified sponsor (U.S. citizen or lawful permanent resident); (2) the family relationship is genuine (supported by birth certificates, marriage certificates, or other evidence); (3) the petitioner can demonstrate ability to support the beneficiary through income documentation or affidavit of support; and (4) the beneficiary meets statutory requirements and has no bars to adjustment.[3][31][42]

Immigration judges often struggle with prima facie eligibility determinations because they are not trained in USCIS visa petition standards and lack expertise in visa category requirements. The L-A-B-R- decision does not provide detailed guidance on how immigration judges should evaluate prima facie approvability, creating uncertainty and inconsistency. Some judges apply stringent standards, requiring nearly all documentation that USCIS would require, while others take a more flexible approach focused on whether the petition appears likely to be approved.

Strategic Presentation of Prima Facie Evidence

Practitioners can improve continuance success rates by providing comprehensive prima facie evidence with continuance motions. For immediate relative petitions (spouse of U.S. citizen), provide: (1) the beneficiary's birth certificate; (2) the petitioner's U.S. citizenship certificate or passport; (3) evidence of marriage (marriage certificate); (4) the I-130 receipt notice; (5) documentation of the petitioner's income (recent tax returns, W-2s, or employment letter); and (6) evidence that the beneficiary has no bar to adjustment (police clearance letters, medical examination documentation if already obtained). For family-based employment visa petitions or employment-based petitions, provide additional documentation regarding labor certification status, salary information, and job offer letters.

For U visa petitions, provide: (1) the law enforcement certification (Form I-918B) signed by the certifying law enforcement officer; (2) the completed I-918 petition; (3) evidence of the qualifying crime through police reports, court documents, or prosecutor certification; (4) evidence of victimization (medical reports, psychological evaluations); and (5) documentation of cooperation with law enforcement (written statements from officers, coordination with prosecution).

The evidentiary submission format matters substantially. Practitioners should organize evidence into a coherent narrative with headings that guide the immigration judge through the prima facie analysis, explaining how each document demonstrates an element of eligibility. This reduces the burden on the immigration judge and increases the likelihood that the judge will grant the continuance.

Administrative Efficiency as a Factor and Strategic Response

How Administrative Efficiency Weighs Against Continuances

The L-A-B-R- decision elevated administrative efficiency to a significant factor in continuance analysis, stating that immigration judges should consider "administrative efficiency in deciding whether to grant a continuance, since at bottom, continuances are themselves intended to promote efficient case management."^[31] This framing is problematic from practitioners' perspectives, because it treats efficiency as primarily serving case docket management rather than serving the substantive goal of fair adjudication. Immigration judges may interpret this language to mean that continuances should be granted only when they serve the court's administrative interests, rather than recognizing that continuances serve respondents' interests in obtaining counsel and gathering evidence.

The BIA in L-N-Y- emphasized administrative efficiency concerns where the respondent's collateral matter was pending with no clear resolution timeline.^[20]^[51] When a respondent's U visa petition is pending with USCIS and the petition adjudication timeline is uncertain, the BIA views the continuation as potentially creating indefinite delay that undermines administrative efficiency. Similarly, where visa priority dates are many years away, the BIA emphasizes that granting continuances for indefinite periods harms efficiency.^[28]^[58]

Strategic Counter-Arguments to Administrative Efficiency Concerns

Practitioners should develop counter-arguments to administrative efficiency concerns. One effective argument is that denying a continuance and issuing a removal order does not actually serve efficiency if the respondent will subsequently file a motion to reopen based on approved collateral relief. The BIA has acknowledged that "allowing relief repeatedly delayed for long periods of time given that country conditions or personal circumstances may change during the pendency of proceedings" may ultimately be inefficient.^[50] If a respondent will pursue post-removal reopening, granting an initial continuance serves ultimate efficiency by

avoiding the inefficiency of reopening motions.

Another argument emphasizes that delay attributable to USCIS processing, not the respondent, does not support denying continuances. In *L-N-Y-*, the BIA gave significant weight to DHS's position that delay was attributable to slow USCIS processing, but practitioners should argue that respondents should not be penalized for USCIS delays beyond their control. The respondent has diligently pursued collateral relief by filing with USCIS; additional delay for USCIS adjudication is not caused by respondent lack of diligence.

A third argument involves characterizing the continuance as serving the court's efficiency by allowing the respondent to resolve potentially meritorious claims through collateral relief rather than requiring full hearing on merits. If the respondent may be eligible for cancellation of removal, work visa relief, or other forms of relief, granting a continuance to pursue collateral relief avoids the need for full evidentiary hearing on the removal charge.

Conclusion and Strategic Framework

Continuances in immigration court proceedings remain a critical procedural tool, but the legal landscape has substantially narrowed since 2009. The *L-A-B-R-* framework and subsequent BIA decisions have restricted immigration judges' discretion and elevated administrative efficiency as a competing consideration against continuances. Practitioners seeking continuances must present comprehensive evidence of good cause, establish both the likelihood that collateral relief will be granted and its material effect on removal proceedings, demonstrate diligence in pursuing relief, and respond to administrative efficiency concerns through strategic argumentation.

The empirical evidence demonstrating that longer continuances substantially improve respondents' chances of securing counsel and avoiding removal creates tension with the administrative efficiency rationale animating current doctrine. This tension is unlikely to be resolved through litigation, because federal courts defer substantially to immigration judges' discretionary continuance decisions. Rather, reform must come through the BIA and Attorney General clarifying or modifying continuance standards, or through legislative action establishing default continuance periods for unrepresented respondents.

For Northern California practitioners, success in continuance motion practice requires detailed knowledge of individual immigration judge preferences, comprehensive preparation of continuance motions with supporting evidence, clear articulation of *L-A-B-R-* factors, and strategic framing of administrative efficiency arguments. Initial continuances for unrepresented respondents seeking counsel are highly likely to be granted, but subsequent continuances require increasingly strong justification. Practitioners should request specific continuance periods rather than indefinite continuances, provide detailed evidence of prima facie eligibility for collateral relief, and address diligence directly rather than leaving this to implication. The quality of the initial continuance motion often determines whether immigration judges will grant subsequent continuances, making the first motion a critical investment in case success.