NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHIKWU EDEH, Petitioner, v. MERRICK GARLAND, Attorney General, Respondent.	No. 21-70781 Agency No. A203-139-634 MEMORANDUM[*]

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted December 8, 2022
Phoenix, Arizona

Before: WARDLAW and BUMATAY, Circuit Judges, and ZOUHARY,[**] District Judge.

Chikwu Edeh, a citizen of Nigeria, petitions for review of a decision of the Board of Immigration Appeals ("BIA") affirming the order of an Immigration Judge ("IJ") denying his request for a continuance. We have jurisdiction under 8 U.S.C. § 1252 and deny the Petition.

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The Honorable Jack Zouhary, United States District Judge for the Northern District of Ohio, sitting by designation.

Edeh came to the United States in 2010 on a non-immigrant visa, which lasted only six months. He remained in the country and was placed in removal proceedings in 2013. After two continuances, an IJ found Edeh removable under 8 U.S.C. § 1227(a)(1)(B) in 2017. The IJ then scheduled an additional hearing to determine whether Edeh was eligible for any potential form of relief. At the next hearing, Edeh conceded he was removable and ineligible for cancellation of removal, and also indicated he did not seek voluntary departure. However, Edeh claimed that he may be eligible for adjustment of status under 8 U.S.C. § 1255(e)(3) because, years earlier, he married a United States citizen.

Edeh, through counsel, asserted that his wife submitted a Form I-130 alien relative visa petition to United States Citizenship and Immigration Services ("USCIS") on his behalf in April 2018. He requested another continuance pending adjudication of the visa petition. The IJ denied Edeh's request for a continuance, noting Edeh allegedly married "some two years after being placed in removal proceedings" and "no I-130 ha[d] been approved." The IJ then ordered Edeh removed because there was "no form of relief immediately available."

Edeh timely appealed, asserting the IJ should have continued proceedings to allow USCIS to process the I-130 visa petition. The BIA rejected that argument because Edeh did not "submit[] documentation supporting his claim of *prima facie* eligibility for adjustment of status to warrant a continuance pending adjudication of

the visa petition." Further, the record lacked any "proof of the filing of a Form I-130 on [Edeh's] behalf or clear and convincing evidence to demonstrate the bona fides of the marriage." The BIA affirmed the IJ decision and dismissed Edeh's appeal. Edeh now challenges the IJ's denial of a continuance and the BIA's order affirming that denial.

When the BIA affirms an IJ decision while adding its own reasoning, we review both decisions. *See Rodriguez-Roman v. INS*, 98 F.3d 416, 425 n.11 (9th Cir. 1996). "We review for abuse of discretion an IJ's denial of a continuance." *Ahmed v. Holder*, 569 F.3d 1009, 1012 (9th Cir. 2009); *see also Rios-Berrios v. INS*, 776 F.2d 859, 862 (9th Cir. 1985) ("[T]he decision to grant or deny continuances is in the sound discretion of the [IJ] and will not be overturned except on a showing of clear abuse."). "Absent a showing of clear abuse, we typically do not disturb an IJ's discretionary decision not to continue a hearing." *Biwot v. Gonzales*, 403 F.3d 1094, 1099 (9th Cir. 2005).

Edeh argues he was entitled to a continuance because he was the beneficiary of a *prima facie* approvable I-130 visa petition. He correctly notes that pursuit of an adjustment of status may qualify as good cause for a continuance. But petitioners are not entitled to continuances based on mere speculation. *See Singh v. Holder*, 638 F.3d 1264, 1274 (9th Cir. 2011); *see also Matter of L-A-B-R-*, 27 I&N Dec. 405, 414 (A.G. 2018) (noting that the BIA has "long held that continuances should not be

granted when a [petitioner's] collateral pursuits are merely speculative").

An IJ may grant a continuance only "for good cause shown." 8 C.F.R. § 1003.29. "Whether a denial of a continuance constitutes an abuse of discretion must be evaluated on a case by case basis . . . ." *Ahmed*, 569 F.3d at 1012. In cases like this one, "the focus of the inquiry is the apparent ultimate likelihood of success on the adjustment application." *Matter of Hashmi*, 24 I&N Dec. 785, 790 (BIA 2009). Because Edeh was already in removal proceedings when the alleged marriage took place, there is a rebuttable presumption that the marriage was entered into in bad faith. *Malilia v. Holder*, 632 F.3d 598, 604–05 (9th Cir. 2011). Thus, Edeh "had the burden of proof to show, through 'clear and convincing evidence,' that his marriage was not fraudulent." *Id.*

Edeh failed to meet that burden. He presented no evidence, outside of his own representations, that he was eligible for adjustment of status. In fact, he failed to produce *any* documentary evidence that an I-130 visa petition had been submitted on his behalf or that his marriage was legitimate. Thus, as the IJ noted and BIA confirmed, Edeh failed to establish that any immediate relief was available to him. And even if he were eligible for adjustment, the denial was proper because the "application had not been approved at the time of the hearing and no relief was then immediately available." *Sandoval-Luna v. Mukasey*, 526 F.3d 1243, 1247 (9th Cir. 2008) (per curiam).

Without clear and convincing evidence demonstrating good cause, it was well within the IJ's discretion to deny the requested continuance.

PETITION DENIED.