



PROSECUTORIAL DISCRETION

What is Prosecutorial Discretion (“PD”)?

In certain situations, the Department of Homeland Security (“DHS”) decides not to detain, start deportation proceedings against, or physically remove certain non-citizens from the United States. This is called “prosecutorial discretion” (PD). The decision is based on priorities for deportation and the facts of a specific case. Non-citizens without criminal records and certain positive factors, such as close ties to the United States or a history of paying taxes, are more likely to be granted PD.

PD can take many forms but one of the most common is DHS agreeing to “administrative closure” of removal (deportation) proceedings against certain non-citizens.

What is Administrative Closure (“AC”)?

An immigration judge may administratively close a case if DHS and the person in removal proceedings both request it. When a case is administratively closed, it is removed from the court’s calendar indefinitely and no future hearings are scheduled. AC does **not** mean the case is over; it just means that no future hearing is scheduled. The case can be reopened at any time at the request of DHS or the person in proceedings. **For this reason, even though a case is administratively closed, the non-citizen must continue to notify the immigration court and DHS of address changes by filing form EOIR-33 within 5 days of the move. Failure to do so may result in a removal order if a court hearing is rescheduled and the non-citizen does not get the notification because of a change of address.**

The Benefits of Administrative Closure

Some of the benefits include, but are not limited to:

- The threat of deportation is eliminated while a case is administratively closed;
- If relief from removal (asylum, for example) is not likely to be granted, AC can delay a final order of deportation;
- If eligible for employment authorization prior to AC, a non-citizen may continue to renew the work permit in certain situations;
- The non-citizen can continue to strengthen ties to the United States while the case is closed. This may help in seeking certain relief from removal at a later time;
- AC can allow applications filed with other immigration agencies, such as United States Citizenship and Immigration Service (“USCIS”), to be processed without having to worry about immigration court hearings.

The Risks and Downsides of Administrative Closure

Some of the risks and downsides include, but are not limited to:

- AC, on its own, does not grant any immigration status or benefits;
- AC is not permanent. DHS may seek to put the case on the calendar for an immigration court hearing at any time;
- Non-citizens cannot travel abroad while removal proceedings are administratively closed;

- Changes in an immigrant's home country while a case is administratively closed may weaken an asylum application;
- The memory of witnesses may fade and evidence may become stale while a case is administratively closed.

These lists of risks and benefits are not exhaustive. Many other factors specific to each case must be considered. For some people, AC may be the best possible outcome for their case; for others, it may not be a good choice. The decision to administratively close removal proceedings should be made after consultation with an experienced immigration attorney.

If you have questions, please call Catholic Migration Services at (718) 236-3000, extension 2015, extension 2018, or you can e-mail us at immigrationassistance@catholicmigration.org with your name, phone number and the languages you speak.