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States Court of Appeals  
for the Third Circuit

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2-19-2008

## Pastor v. Atty Gen USA

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 06-5121

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MARCO PASTOR  
Petitioner,

v.

ATTORNEY GENERAL OF THE UNITED STATES

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On Petition for Review of an Order  
of the Board of Immigration Appeals  
(No. A75-454-824)  
Immigration Judge: Hon. Henry S. Dogin

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Submitted Under Third Circuit LAR 34.1(a)  
February 1, 2008

Before: RENDELL and CHAGARES, Circuit Judges  
POLLAK,\* District Judge

(Opinion filed: February 19, 2008 )

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OPINION

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POLLAK, District Judge

Petitioner Marco Pastor appeals the Board of Immigration Appeals' affirmance of

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\*Honorable Louis H. Pollak, Senior United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

a decision of the Immigration Judge (“IJ”) to deny a request for continuance of removal proceedings. This court has jurisdiction over the petition pursuant to 8 U.S.C. § 1252. *See Khan v. Attorney General*, 448 F.3d 226, 229-33 (3d Cir. 2006). We write primarily for the parties, and assume familiarity with the facts, decisions, and records of the case.

Seeking employment-based permanent residency, petitioner submitted an application for Labor Certification (Form ETA-750) to the Department of Labor. Petitioner requested a continuance of his removal proceedings pending resolution of the application. The Immigration Judge had previously granted two continuances on other grounds, and denied this third request. Petitioner argues that this denial was an abuse of discretion and violated his right of due process.

We are bound by precedent to reject these arguments. In *Khan v. Attorney General*, we held that “[w]here . . . an alien has failed to submit a visa petition, an IJ’s decision to deny the alien’s continuance request is squarely within the IJ’s broad discretion, at least absent extraordinary circumstances . . . .” 448 F.3d at 234. Here, petitioner has neither submitted a visa application nor alleged “extraordinary circumstances” that could nevertheless render the IJ’s decision an abuse of discretion. Petitioner’s due process claim, like that presented in *Khan*, “merely recasts his abuse-of-discretion argument in constitutional terms and can be denied for the reason[] already stated.” *Id.* at 236.

Accordingly, the petition for review will be denied.

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