Motions to Reopen

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Types of motions

- Motions to rescind in absentia orders – have long been in the INA, allows for rescission and reopening if either: (a) person did not receive notice of the hearing; (b) failed to appear due to exceptional circumstances; (c) failed to appear due to incarceration. 8 U.S.C. §§ 1229a(b)(5)(C) & (e)(1).
- Motions to remand – if IJ doesn't rule on a motion to reopen before an administrative appeal is filed, or if an appeal is pending and there is a viable basis for reopening, the Board will treat the motion as a motion to remand (and consolidate motion with the appeal). 8 C.F.R. § 1003.2(c)(4). (tip: file early)
- Motions to reissue – asks the IJ/BIA to reissues the identical decision to restart the clock for further review (e.g., due to errors in mailing address)

What's a motion to reopen?

- Important mechanism that allows an individual to ask the agency to reopen & vacate his/her removal order based on presentation of some material and previously unavailable evidence.
- If a motion to reopen is GRANTED → DHS can no longer deport the person based on that order
- Authority for IJ / BIA motions: 8 U.S.C. § 1229a(c)(7); 8 C.F.R. §§ 1003.2 (BIA), 1003.23(b) (IJ)
- "Authority" for DHS motions: 8 C.F.R. § 103.5

Types of motions to reopen

- General: 8 U.S.C. § 1229a(c)(7) – 90 day deadline & limited to 1
- Changed country conditions (to apply for fear-based protection): 8 U.S.C. § 1229a(c)(7)(C)(ii) – no deadline
- Special motions for domestic violence survivors: 8 U.S.C. § 1229a(c)(7)(C)(iv) – 1 year deadline, waivable
- Sua sponte: 8 C.F.R. §§ 1003.2(a)(BIA); 1003.23(b)(1)(IJ) – regulatory creature, no deadline, but problematic for other reasons!
- DHS motions: jointly by DHS & respondent, or just DHS, 8 C.F.R. §§ 1003.2(c)(iii) (BIA); 1003.23(b)(4)(iv)(IJ). Increased chance of grant.
- MTR DHS-issued order: 8 C.F.R. § 105.3 – 30 day deadline, waivable for good cause shown, no departure bar

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First appeared as part of the conference materials for the
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"Adjustment of Status (approx. 30 min.)"