Motions to Reopen

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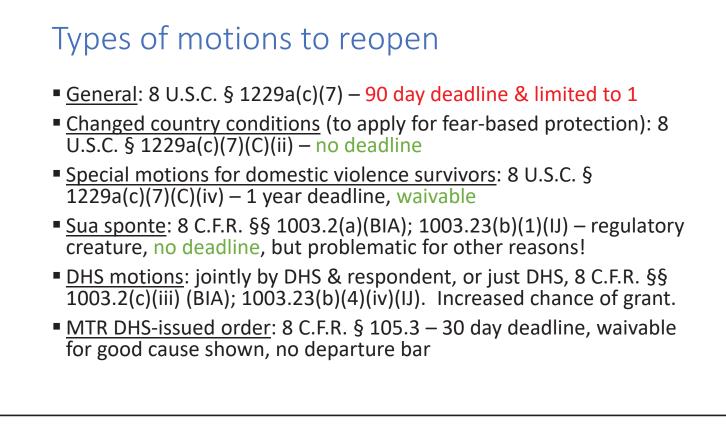
Types of motions

- 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





What's a motion to reconsider?

- Important mechanism that allows an individual to ask an IJ or the BIA to reconsider & vacate his/her removal order due to an error of law or fact in the agency's decision and supported by pertinent authority.
- If a motion to reconsider is GRANTED → DHS can no longer deport the person based on that order
- Authority for IJ / BIA motions: 8 U.S.C. § 1229a(c)(6); 8 C.F.R. §§ 1003.2 (BIA), 1003.23(b) (IJ)
- "Authority" for DHS motions: 8 C.F.R. § 103.5

Let's recap...and add some law.

MOTION TO RECONSIDER

- "errors of law or fact"
- Supported by "pertinent authority"
- Generally, 1 motion within 30 days of the date of final order

• Unless....

- DHS joins
- Demonstrate equitable tolling

MOTION TO REOPEN

- "new facts" supported by "affidavits or other evidentiary material" not previously available
- Generally, 1 motion within 90 days of the date of final order
 - Unless...
 - Meet an exception
 - DHS joins
 - Demonstrate equitable tolling!

Also available as part of the eCourse

Adjustment of Status, Cancellation of Removal and Other Discretionary Relief, and Appeals and Motions to Reopen: The Basics

First appeared as part of the conference materials for the 2020 A Practical Guide to Immigration Removal Proceedings session "Adjustment of Status (approx. 30 min.)"