

Motions to Reopen After *Mata v. Lynch*: Practice Advisory

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Motions to Reopen

- Statutory, INA 240(c)(7)
 - Must state new facts that will be proved at a hearing to be held if the motion is granted; and
 - Must be supported by affidavits or other evidentiary material
- Regulatory, 8 C.F.R. § 1003.23(b) (IJ) or 8 C.F.R. § 1003.2(c) (BIA)
 - Must state new facts; supported by affidavits and other evidence
 - Must be material, unavailable/undiscovered or presented at the earlier hearing

Time and Numerical limits

- Must be filed within 90 days of the final administrative order or removal
- Only one motion may be filed

Exceptions to the Time and Numerical Limits

- Requests for relief from removal for battered spouse, child, or parent (VAWA)
- *In absentia* orders
 - If no notice: MTR may be filed at any time
 - If notice: 180 days; must show "exceptional circumstances"
- Changed country conditions in asylum cases
- Joint motions
- Motions filed before September 30, 1996
- MTR for termination of withholding of removal under INA § 241(b)(3) or CAT
- MTR granted by Board or IJ *sua sponte* under 8 C.F.R. § 1003.23(b)(1) and 1003.2(a)
- And now, Motions subject to **equitable tolling**

MTR under *Matter of Lozada*

- If the alien meets requirements under *Lozada*, he/she can file for MTR
- Must also show **prejudice** due the counsel's performance (unless the counsel's ineffectiveness resulted in an entry of an *in absentia* order)

- Generally, must meet 90-day deadline
- The Board has held that the ineffectiveness of counsel does not create an "exception" to the 180-day time limit for filing a motion to reopen under former section 242B(c)(3)(A) of the Act. *Matter of A-A-*, 22 I&N Dec. 140 (BIA 1998); *Matter of Lei*, 22 I&N Dec. 113 (BIA 1998).
- Unless it is an *in absentia* case, in which case the deadline is 180-days – IAC falling under exceptional circumstances (*Matter of Grijalva*). If claiming IAC the 180-day deadline still must be met, but the failure to appear at the hearing must be due to IAC which could be an exceptional circumstance
- Beyond these deadlines, practitioners should argue that equitable tolling applies

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