

Motions to Reopen

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Types of motions

- **Motions to rescind in absentia orders** – have long been in the INA, allow 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)(1) (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 reconsider & 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

Also available as part of the eCourse

[2022 A Practical Guide to Immigration Removal Proceedings eConference](#)

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