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Practice Guide: Motions to Reopen

What is a Motion to Reopen (MTR)?

A Motion to Reopen (MTR) in U.S. immigration proceedings is a formal legal request asking an immigration authority to reopen a case that has already been decided so that it can consider new evidence, changed circumstances, or other qualifying information. An MTR is commonly filed with either the Immigration Court or the Board of Immigration Appeals (BIA)—both being non-Article III administrative tribunals under the Department of Justice's Executive Office for Immigration Review (EOIR)—depending on which body issued the decision in question. For non-citizens ordered removed, an MTR is often necessary because a final order of removal bars adjustment of status to permanent residency,[1] among other immigration pathways. Either the Respondent or the Department of Homeland Security (DHS) may move to reopen proceedings.

Time and Numerical Limitations

In the interest of judicial finality,[2]

- The Respondent may generally file only ONE Motion to Reopen. 8 U.S.C. § 1229a(c)(7)(A). See also *Matter of M-M-L-J-*, 29 I&N Dec. 843 (BIA 2026).
- The Motion to Reopen with the Immigration Court Must be filed within 90 days, 8 C.F.R. § 1003.23(b)(1), or 180 days for *in absentia*[3] removals. Id. § 1003.23(b)(4)(ii).
- The Motion to Reopen with the BIA Must be filed within 90 days. Id. § 1003.2(c)(2), or 180 days for *in absentia* removals. Id. § 1003.2(c)(3).

Exceptions to Time and Numerical Limitations

Lack of Notice

[1] To be eligible for adjustment of status, one must be admissible to the United States. 8 U.S. Code § 1255(a). Non-citizens ordered removed are generally inadmissible. Id. § 1182(a)(9)(A)(ii).
[2] See *INS v. Abudu*, 485 U.S. 94 (1988) ("There is a strong public interest in bringing litigation to a close as promptly as is consistent with the interest in giving the adversaries a fair opportunity to develop and present their respective cases.") and *INS v. Doherty*, 502 U.S. 314 (1992) ("[A]s a general matter, every delay works to the advantage of the deportable alien who wishes merely to remain in the United States.").
[3] *In absentia* describes a situation where removal proceedings take place while the non-citizen Respondent is not physically present.

Both the Immigration Court and BIA imposes no time limits on a Motion to Reopen if the non-citizen Respondent

- did not receive proper notice under INA § 239(a)(1) or (2), or
- was in state or federal custody and the failure to appear was through no fault of his own. See 8 C.F.R. §§1003.23(b)(4)(ii)-(iii) and 1003.2(c)(3)(i).

INA § 239(a)(1) refers to the initial charging document, variously called a "Notice to Appear" (NTA) or an "Order to Show Cause and Notice of Hearing." This document must contain an exact date, time, and location to qualify as providing proper notice. See *Niz-Chavez v. Garland*, 593 U.S. 155 (2021).

INA § 239(a)(2) refers to the subsequent Notice of Hearing. In June 2024, the Supreme Court held in *Campos-Chaves v. Garland*, 602 U.S. ___ (2024) that a defective NTA alone was not a sufficient basis for rescission of an *in absentia* removal order. In other words, a Notice of Hearing that contains an exact date, time, and location can serve as adequate notice even if the initial NTA is defective, thus foreclosing reopening based on lack of notice, at least for *in absentia* removals—that is, when the Respondent failed to appear and had no other compelling excuses.

Ineffective Assistance of Counsel

Ineffective assistance of counsel is an additional ground for reopening. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988). Several Federal Circuit Courts have held that statutorily-prescribed time and numerical limitations on Motions to Reopen do not apply when the Respondent is reopening on the basis of ineffective assistance of counsel. *Iturribarria v. INS*, 321 F.3d 889 (9th Cir. 2003) (citing *Rodriguez-Lariz v. INS*, 282 F.3d 1218 (9th Cir. 2002)) (recognizes equitable tolling "during periods when a petitioner is prevented from filing because of deception, fraud, or error, as long as the petitioner acts with due diligence in discovering the deception, fraud, or error. Equitable tolling does not . . . apply only in ineffective assistance of counsel cases involving individuals posing as attorneys.").

Other circuits have declined to equitably toll numerical limits when the Respondent claims ineffective assistance, while recognizing that time limits may be equitably tolled, depending on the strength of the evidence. See *Garcia Morin v. Bondi*, 152 F.4th 626, 632–33 (5th Cir. 2025) and *Tapia Martinez v. Gonzales*, 482 F.3d 417, 421 (6th Cir. 2007).

There is reason to think that time and numerical limitations are different in nature. The Supreme Court has held that unlike "[s]tatutes of limitations [which] merely govern the timeframe for bringing a claim," numerical limits "constitute a modified *res judicata* rule . . . and thus embody Congress's judgment regarding . . . the appropriate balance between finality and error correction." *Jones v. Hendrix*, 599 U.S. 465, 491 (2023). See also *Matter of M-M-L-J-*, 29 I&N Dec. 843 (BIA 2026).[4]

Asylum and/or Withholding of Removal

The time and numerical limitations on reopening shall not apply if the basis of the Motion to Reopen is to apply for asylum or withholding of removal under

[4] Published precedential BIA decisions are binding on all immigration judges nationwide except for those sitting in a jurisdiction where the federal Circuit Court of Appeals has produced adverse precedent.

- INA § 241(b)(3) or
- the Convention Against Torture (CAT).[5]

The Respondent must demonstrate "changed country conditions" arising in the country of nationality or the country to which removal has been ordered. 8 C.F.R. § 1003.23(b)(4)(i).

Required Substantive Evidence

The Motion to Reopen must either

- Demonstrate lack of notice under INA § 239(a)(1) or (2), or
- "[S]hall state the new facts that will be proven at a hearing to be held if the motion is granted and shall be supported by affidavits and other evidentiary material. Any motion to reopen for the purpose of acting on an application for relief must be accompanied by the appropriate application for relief and all supporting documents." Id. § 1003.23(b)(3). The BIA has the same substantive requirements.
- New evidence must be "material" and
    1. was not available and
    2. could not have been discovered or presented at the former hearing.

Lack of notice is shown through defective charging documents, such as a Notice to Appear (NTA) lacking either a time, date, or court location. Subsequent defective notices of hearing may be used in conjunction with a defective NTA. Attorneys also frequently argue for reopening based on notices being sent to the wrong address, along with other problems pertaining to the deliver and receipt of mail.

Concerning "new material facts" not previously available, a customary practice for attorneys is to argue changed personal circumstances, such as an approved I-130, Petition for Alien Relative, or Special Immigrant Juvenile Status I-360, or the birth of U.S. citizen children. As of 2026, the BIA has signaled unwillingness to treat an I-130 Petition alone, absent any other equities, as a changed circumstance significant enough to warrant reopening. See *Matter of M-M-L-J-*, 29 I&N Dec. 843 (BIA 2026) (approved I-130) and *Matter of Herrera-Nunez*, 29 I&N Dec. 695 (BIA 2026) (BIA 2026) (I-130 pending). However, Immigration Courts vary in this regard, depending on the immigration judge presiding.

When a Motion to Reopen to rescind an *in absentia* removal order is filed within 180 days, the Respondent must show that the failure to appear was due to "exceptional circumstances." Id. § 1003.23(b)(4)(ii). "Exceptional circumstances" are explicitly enumerated: "battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien or serious illness or death of the spouse, child, or parent of the alien, *but not including less compelling circumstances*." INA § 240(e)(1) (emphasis added).

The Motion must include a declaration that the non-citizen's removal case is not subject to any pending judicial decision, and that the non-citizen does not have any pending criminal proceedings against them. This is usually done through enclosing an FBI Identity History Summary.

[5] For a detailed breakdown of the differences between Withholding of Removal under INA § 241(b)(3) and CAT, see *Immigrant Legal Resource Center, Qualifying for Protection Under the Convention Against Torture* (Nov. 21, 2023), https://www.ilrc.org/sites/default/files/2023-11/Qualifying%20for%20Protection%20Under%20the%20Convention%20Against%20Torture.pdf

The immigration judge retains discretion to deny a Motion to Reopen even if the moving party has established a *prima facie* case for relief. The Court and BIA also possess authority to reopen proceedings *sua sponte*.[6] Reopening *sua sponte* is warranted due to exceptional circumstances, family unity, and humanitarian concerns. See *Matter of G- D-*, 22 I&N. Dec. 1132, 1134 (BIA 1999) and *Matter of J- J-*, 21 I&N Dec. 976, 984 (BIA 1997).

Ineffective Assistance of Counsel

When the Respondent seeks reopening based on ineffective assistance of counsel, they must comply with the *Lozada* elements:

- Include an affidavit from the respondent setting forth in detail the relevant facts, such as the specific terms of the agreement entered into with counsel;
- Include evidence that the offending counsel was informed of the allegations and provided an opportunity to respond, and any subsequent response from counsel; and
- "[R]eflect whether a complaint has been filed with appropriate disciplinary authorities regarding such representation, and if not, why not." *Matter of Lozada*, 19 I&N Dec. at 639.

The Respondent is generally required to file a bar complaint against their former counsel and enclose a copy of the complaint, along with any supporting evidence, in the Motion to Reopen. Some circuits require strict compliance, see *Hernandez-Ortez v. Holder*, 741 F.3d 644, 647–48 (5th Cir. 2014), while others require only "substantial" compliance with the reporting requirements, see *Castillo-Perez v. INS*, 212 F.3d 518, 526 (9th Cir. 2000).

The BIA's current position is that a Motion to Reopen based on ineffective assistance "*must* include a copy of the bar complaint filed with disciplinary authorities and proof of the filing of that complaint, or an explanation why a bar complaint was not filed." *Matter of L-R-M-C- & V-A-M-M-*, 29 I&N Dec. 757 (BIA 2026) (risk of collusion between attorneys to get clients a Motion to Reopen is such that an affidavit from former counsel testifying to the bar complaint being filed against him and a certified mail receipt showing the complaint being sent to the bar association are insufficient) (emphasis added).

Initial Asylum and/or Withholding of Removal

A Motion to Reopen based on "changed country conditions" with the Immigration Court under 8 C.F.R. § 1003.23(b)(4)(i) or with the BIA under Id. § 1003.2(c)(3)(ii) must show changes that are

- Material and not available and
- Could not have been discovered or presented at the previous proceeding.

In determining whether the accompanying evidence of a change in country conditions is "material," the Court shall "compare the evidence of country conditions submitted with the motion to those that existed at the time of the merits hearing." *Matter of S-Y-G-*, 24 I&N Dec. 247 (BIA 2007). The Respondent bears the burden of proving that "if proceedings before the immigration judge were reopened, . . . the new evidence would likely change the result in the case." *Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992).

[6] The phrase "sua sponte" is a Latin phrase meaning "[w]ithout prompting or suggestion; on its own motion." Black's Law Dictionary (12th ed. 2024).

Depending on the Federal Circuit, the Immigration Court or BIA may consider relevant changes in personal circumstances in conjunction with changed country conditions when determining whether Respondent has established *prima facie* eligibility for Asylum relief. *Blake v. U.S. Attorney General*, 945 F.3d 1175 (11th Cir. 2019). To satisfy the burden of reopening, evidence of country conditions may not be "largely cumulative" of that already in the record. *Matter of Coelho*, supra, at 474.

Renewed Asylum and/or Withholding of Removal

Notwithstanding a previous denial, "[a]n application for asylum of an alien may be considered . . . if the alien demonstrates to the satisfaction of the Attorney General . . . the existence of changed circumstances which materially affect the applicant's eligibility for asylum . . . ." 8 U.S.C. § 1158(a)(2)(D). Depending on the Circuit, when a Motion to Reopen is based on a renewed asylum application, "[n]ew facts that provide additional support for a pre-existing asylum claim can constitute a changed circumstance. These facts may include circumstances that show an intensification of a preexisting threat of persecution or new instances of persecution of the same kind suffered in the past." *Garcia Hernandez v. Garland*, 27 F.4th 263, 271 (4th Cir. 2022) (citing *Zambrano v. Sessions*, 878 F.3d 84, 88 (4th Cir. 2017)).

Further, in some circuits, the Court is not barred from considering changed circumstances affecting Respondent's eligibility for Asylum even if those alleged circumstances occurred after the one-year filing deadline specified in 8 U.S.C. § 1158(a)(2)(B) but prior to the filing of the first Asylum application. See *Garcia Hernandez*, at 270-71 (BIA erred in declining to consider the murder of Respondent's brother in 2014 even though Respondent entered the U.S. in 2012 but only applied for Asylum defensively in 2018).

Relief Sought

A Motion to Reopen must specify the relief being sought. The Respondent must prove eligibility for the relief sought. Common forms of relief include

- Adjustment of status with U.S. Citizenship and Immigration Services (USCIS)[7]
- Cancellation of Removal, or
- Asylum and/or Withholding of Removal

Adjustment of Status

Generally, under 8 U.S. Code § 1255(a), to be eligible to adjust status to permanent residency, the non-citizen must

- Be inspected and admitted or paroled (VAWA self-petitioners are exempt from this element);
- make an application for such adjustment;
- be eligible to receive an immigrant visa and is admissible to the United States; and
- an immigrant visa is immediately available at the time his application is filed.

[7] Under 8 C.F.R. §§ 245.2(a)(1) and 1245.2(a)(1), USCIS generally lacks jurisdiction to adjudicate an application for adjustment of status under INA § 245 when the applicant is in removal proceedings and the immigration judge has jurisdiction over that application. However, USCIS retains jurisdiction in certain circumstances, including specified cases involving arriving non-citizens.

If the relief sought is adjustment of status, the Respondent must have an immigrant visa petition approved by USCIS. The visa must be current, according to the latest State Department Visa Bulletin, a point that is relevant for those who are not immediate relatives of U.S. Citizens and who are eligible for immigrant visas under family or employment-based "preference categories" annually capped.

For those who entered the U.S. without inspection, the requirement that one be "inspected and admitted or paroled" is often satisfied via reentry pursuant to Advance Parole (AP), a benefit sought via Form I-131 from USCIS. Those holding certain statuses such as Deferred Action for Childhood Arrivals (DACA) and Temporary Protected Status (TPS) are eligible for AP. Parole is discretionary but granted with predictable frequency.

The BIA has recently sought to tamp down on strategic uses of AP. In 2026, the BIA held that departure after being granted Advance Parole triggers the 10-year bar to admission in INA § 212(a)(9)(B)(i)(II), provided that Respondent has been unlawfully present for over a year, see *Matter of Delcarmen-Lara*, 29 I&N Dec. 830 (BIA 2026). The holding of *Delcarmen-Lara* is applied prospectively, meaning that departures prior to the holding do not trigger inadmissibility and render the Respondent ineligible for adjustment of status. The BIA also held in *Matter of M-R-I-*, 30 I&N Dec. 137 (BIA 2026), that asylum applicants who return to their home countries are presumed to have abandoned their applications, affirming 8 C.F.R. § 1208.8(b). In other words, using AP to create eligibility for adjustment of status may compromise a concurrent pending asylum case.

Alternatively, certain Special Immigrants, particularly Special Immigrant Juveniles (SIJ), see INA § 245(h), and VAWA self-petitioners (abused spouses and unmarried children of U.S. Citizens and permanent residents, or abused parents of U.S. Citizens), see Id. § 245(a), are exempt from having to prove that they were admitted or paroled. Once Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, is approved, the beneficiary may adjust status to become a permanent resident, provided that there is no longer an order of removal against them.

Cancellation of Removal

Under 8 U.S.C. § 1229b, the non-citizen Respondent may become a permanent resident if they

- Have been physically present in the U.S. for a continuous period of not less than 10 years immediately preceding the date of such application;
- have been a person of good moral character during such period;
- have not been "convicted of an offense under section 1182(a)(2), 1227(a)(2), or 1227(a)(3) of this title, subject to paragraph (5)"[8]; and
- establish that removal would result in "exceptional and extremely unusual hardship" to the non-citizen's spouse, parent, or child who is a U.S. Citizen or Permanent Resident.

The Violence Against Women Act (VAWA) provides a separate set of eligibility requirements. The non-citizen Respondent

[8] These refer to grounds of inadmissibility and deportability based on Crimes Involving Moral Turpitude (CIMT), aggravated felonies, and document fraud. Paragraph (5) refers to a discretionary waiver under 8 U.S.C. § 1227(a)(7) for victims of domestic violence, stalking, or child abuse who face deportation due to criminal removal grounds.

- Must have been battered or subjected to extreme cruelty by a spouse or parent who is or was a U.S. citizen (or is the parent of a child of a U.S. citizen and the child has been battered or subjected to extreme cruelty by such citizen parent);
- Has been physically present in the U.S. for a continuous period of not less than 3 years;
- Has been a person of good moral character during this period;
- Is not inadmissible under "paragraph (2) or (3) of section 1182(a) of this title, is not deportable under paragraphs (1)(G) or (2) through (4) of section 1227(a) of this title, subject to paragraph (5), and has not been convicted of an aggravated felony"[9]; and
- the removal would result in extreme hardship to themselves, their child, or their parent.

Cancellation of Removal for Non-Permanent Residents is requested through Form EOIR-42B. One may only file it if they are in removal proceedings.

The "stop-time rule" dictates that the Respondent ceases to accrue physical presence for the purposes of Cancellation of Removal eligibility upon the filing by DHS of a proper charging document containing the date, time, and location information. Discovering a charging document that is defective according to INA § 239 is therefore critical to establishing Cancellation of Removal eligibility for clients who were ordered removed before they have resided for a total of 10 years in the U.S. What provides a basis for reopening may also create a ground for relief.

Joint Proposed Motion to Reopen

A joint proposed motion to reopen is a request filed by both the Respondent and the opposing party—the Immigration and Customs Enforcement's Office of the Principal Legal Advisor (ICE OPLA)—asking an immigration judge or the BIA to reopen the case.

In both the immigration court and BIA, a joint motion to reopen is not subject to the usual time and numerical limits that generally apply to motions to reopen. See 8 C.F.R. § 1003.23(b)(4)(iv) (immigration court) and Id. § 1003.2(c)(3)(iii) (BIA). Moreover, the immigration judge and BIA may set and extend time limits for OPLA to reply to motions to reopen or reconsider; a motion shall be deemed unopposed unless timely response is made. Id. § 1003.23(b)(1)(iv) (immigration court) and Id. § 1003.2(g)(3) (BIA). However,

- OPLA must agree to join the motion; a request to join does not guarantee agreement.
- The immigration judge or BIA must still grant the motion.

Since both OPLA attorneys and immigration judges are employees of the executive branch, the success of joint proposed motions to reopen is highly dependent on the enforcement priorities of the administration in power. On January 27, 2025, the EOIR rescinded Policy Memorandum 21-26, a Biden-era memo encouraging IJs to grant joint proposed motions to reopen,[10] signaling that the practice is currently disfavored.

[9] These refer to grounds of inadmissibility and deportability based on marriage fraud, national security, Crimes Involving Moral Turpitude (CIMT), aggravated felonies, and document fraud.

[10] EOIR Rescinds and Cancels Policy Memo on Migrant Protection Protocols and Motions to Reopen, AILA (Jan. 27, 2025), https://www.aila.org/library/eoir-rescinds-and-cancels-policy-memo-on-migrant-protection-protocols-and-motions-to-reopen.