



THE UNITED STATES
DEPARTMENT OF JUSTICE
- MOTIONS TO REOPEN

(a) Purpose

A motion to reopen asks the Board to reopen proceedings in which the Board has already rendered a decision in order to consider new facts or evidence in the case.

(b) Requirements

(1) Filing - Motions to reopen must comply with the general requirements for filing a motion. See [Chapter 5.2](#) (Filing a Motion). Depending on the nature of the motion, a filing fee may be required. See [Chapter 3.4](#) (Filing Fees).

(2) Content - A motion to reopen must state the new facts that will be proven at a reopened hearing, and the motion must be supported by affidavits or other evidentiary material. 8 C.F.R. § [1003.2\(c\)\(1\)](#).

A motion to reopen will not be granted unless it appears to the Board that the evidence offered is material and was not available and could not have been discovered or presented at an earlier stage in the proceedings. See 8 C.F.R. § [1003.2\(c\)\(1\)](#).

A motion to reopen based on an application for relief will not be granted if it appears the alien's right to apply for that relief was fully explained and the alien had an opportunity to apply for that relief at an earlier stage in the proceedings (unless the relief is sought on the basis of circumstances that have arisen subsequent to that stage of the proceedings). See 8 C.F.R. § [1003.2\(c\)\(1\)](#).

(c) Time Limits

As a general rule, a motion to reopen must be filed within 90 days of the Board's final administrative decision. 8 C.F.R. § [1003.2\(c\)\(2\)](#). (For cases decided by the Board before July 1, 1996, the motion to reopen was due on or before September 30, 1996. 8 C.F.R. § [1003.2\(c\)\(2\)](#).) There are few exceptions. See subsection (e), below.

(d) Number Limits

A party is permitted only one motion to reopen. 8 C.F.R. § [1003.2\(c\)\(2\)](#). There are few exceptions. See subsection (e), below.

(e) Exceptions to the Limits on Motions to Reopen

A motion to reopen may be filed outside the time and number limits in very specific circumstances. See 8 C.F.R. § [1003.2\(c\)\(3\)](#).

(1) Changed circumstances - When a motion to reopen is based on a request for asylum, withholding or removal, or relief under the Convention Against Torture, and it is premised on new circumstances, the motion must contain a complete description of the new facts that comprise those circumstances and articulate how those circumstances affect the party's eligibility for relief. See 8 C.F.R. § [1003.2\(c\)\(3\)\(ii\)](#). Motions based on changed circumstances must also be accompanied by evidence of the changed circumstances alleged. See 8 C.F.R. § [1003.2\(c\)](#).

(2) In absentia proceedings - There are special rules pertaining to motions to reopen following an alien's failure to appear for a hearing. An "in absentia" order (an order entered when the alien did not come to the hearing) cannot be appealed to the Board. *Matter of Guzman*, 22 I&N Dec. 722 (BIA 1999). If an alien misses a hearing and the Immigration Judge orders the alien removed from the United States, the alien must file a motion to reopen with the Immigration Judge, explaining why he or she missed the hearing. (Unlike the in absentia order, the Immigration Judge's ruling on the motion can be appealed.) Such motions are subject to strict deadlines under certain circumstances. See 8 C.F.R. §§ [1003.2\(c\)\(3\)\(i\)](#), [1003.23\(b\)\(4\)\(ii\)](#), [1003.23\(b\)\(4\)\(iii\)](#).

(3) Joint motions - Motions that are agreed upon by all parties and are jointly filed are not limited in time or number. See 8 C.F.R. § [1003.2\(c\)\(3\)\(iii\)](#).

(4) DHS motions - For cases in removal proceedings, DHS may not be subject to time and number limits on motions to reopen. See 8 C.F.R. § [1003.2\(c\)\(2\)](#), [\(3\)](#). For cases brought in deportation or exclusion, DHS is subject to the time and number limits on motions to reopen, unless the basis of the motion is fraud in the original proceeding or a crime that would support termination of asylum. See 8 C.F.R. § [1003.2\(c\)\(3\)\(iv\)](#).

(5) Pre-9/30/96 motions - Motions filed before September 30, 1996, do not count toward the one-motion limit.

(6) Battered spouses, children, and parents - There are special rules for certain motions to reopen by battered spouses, children, and parents. See Immigration and Nationality Act § [240\(c\)\(7\)\(C\)\(iv\)](#).

(7) Other - In addition to the regulatory exceptions for motions to reopen, exceptions may be created in accordance with special statutes, case law, directives, or other special legal circumstances. The Board may also reopen proceedings at any time on its own initiative. 8 C.F.R. § [1003.2\(a\)](#).

(f) Evidence

A motion to reopen must be supported by evidence. See [Chapter 5.2\(f\)](#) (Evidence).

(g) Motions Filed While an Appeal is Pending

Once an appeal is filed with the Board, the Immigration Judge no longer has jurisdiction over the case. See [Chapter 4.2\(a\)\(2\)](#) (Appeal to the Board vs. motion before the Immigration Judge). Thus, motions to reopen should not be filed with an Immigration Judge after an appeal is taken to the Board. A motion to reopen that is filed with the Board during the pendency of an appeal is generally treated as a motion to remand for further proceedings before an Immigration Judge. 8 C.F.R. § [1003.2\(c\)\(4\)](#). See [Chapter 5.8](#) (Motions to Remand).

(h) Administratively Closed Cases

When proceedings have been administratively closed, the proper motion is a motion to recalendar, *not* a motion to reopen. See [Chapter 5.9\(h\)](#) (Motion to recalendar).

(i) Automatic Stays

A motion to reopen that is filed with the Board does not automatically stay an order of removal or deportation. See [Chapter 6](#) (Stays and Expedite Requests).

(j) Criminal Convictions

A motion claiming that a criminal conviction has been overturned, vacated, modified, or disturbed in some way *must* be accompanied by clear evidence that the conviction *has actually been disturbed*. Thus, neither an intention to seek post-conviction relief nor the mere eligibility for post-conviction relief, without more, is sufficient to reopen proceedings.

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