Adjudicating Motions
Basic Principles

Fall 2015 Motions Training Program

OVERVIEW OF TRAINING

- **When the Board can entertain a motion;**
- Overview of the various types of motions, including when time and number bars apply;
- General requirements for all motions, including the handling of evidence; and
- Sua sponte authority to reopen or reconsider and other special considerations.

Who Can Hear the Case?

- IJ has jurisdiction until appeal is properly filed with Board
  - ***Matter of Patino***, 23 I&N Dec. 74 (BIA 2001)
  - 8 C.F.R. § 1003.23(b)(1)
- Once appeal is filed, jurisdiction lies with Board
  - 8 C.F.R. § 1003.2(c)(4)
- After the Board issues a decision, jurisdiction stays with Board
  - 8 C.F.R. § 1003.2(a)

Exception

- **If the Board dismissed for lack of jurisdiction, the Immigration Judge will generally have jurisdiction over any pending/subsequent Motion to reopen.**
- ***Matter of Mladineo***, 14 I&N Dec. 591 (BIA 1974) (providing that the Board generally will not have jurisdiction over a motion after the Board finds it has no jurisdiction over an appeal).
- ***Matter of Lopez***, 22 I&N Dec. 16 (BIA 1998) (Board retains jurisdiction only to consider motions challenging the prior jurisdictional determination).
- Be sure to check applicable circuit law- (***Hernandez v. Holder***, 738 F.3d 1099 (9th Cir. 2013) (addressing place of filing rule))

Preliminary Considerations

- Motions are often captioned something other than what they are in substance.
  - Must treat the motion as what "it says it is" **and** what "it really is."
- Analysis of a motion is not subject to the limitation on fact-finding found in 8 C.F.R. § 1003.1(d)(3)(iv), which applies only to fact-finding in the course of deciding an appeal.

Preliminary Considerations:

What is the Response to Motion?

- If no response and granting the motion – we generally note in our decision that we do not have a reply (make sure enough time has passed for a response).
- If opposition is filed – we may need to address the particular grounds of opposition.
- If there is an affirmative non-opposition- we will likely do a short order.

Date of Filing

- A motion is deemed filed when received at the Immigration Court or the Board.
  - ***Matter of J-J-***, 21 I&N Dec. 976, 982-984 (BIA 1997).
  - The Date-Stamp on the motion will generally be definitive (not the date on the receipt notice).

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Main Types of Motions

- Motions to reconsider
  - Time and number limits
- Motions to reopen
  - Time and number limits
    - Exceptions
  - Adjudicating timely/non-number barred
    - Requirements
    - Response to the motion
    - Bars to relief

MOTIONS TO RECONSIDER

Motions to Reconsider

- Section 240(c)(6) of the Act
- 8 C.F.R. § 1003.2(b)
- ***Matter of O-S-G-***, 24 I&N Dec. 56 (BIA 2006) – explains that a motion to reconsider is based on the assertion that:
  - (1) the previous decision is premised on a factual or legal error; or
  - (2) the decision should be reevaluated due to a change in law.

Time Limits- Reconsideration

- **8 C.F.R. § 1003.2(b)(2)** --Must be filed within **30 days** after mailing of Board decision, or on or before July 31, 1996, whichever is later
- For removal cases, **section 240(c)(6)(B) of the INA** also provides that a motion to reconsider "must be filed within 30 days of the date of entry of a final administrative order of removal."

Number Limits- Reconsideration

- **8 C.F.R. § 1003.2(b)(2)** provides that "a party may file only one motion to reconsider any given decision."
  - Will not allow multiple motions to reconsider same decision
  - Will generally allow motions to reconsider any decision of the Board
- For removal cases, **section 240(c)(6)(A) of the INA** also provides that an alien "may file one motion to reconsider the decision that the alien is removable from the United States."
  - Again, the statute appears to be more restrictive than the regulations, allowing reconsideration only of the final removal order, not of other orders in the case.

Error of Fact or Law

- If the party filing the motion has correctly pointed out an error of fact or law, we will generally grant reconsideration (unless it was harmless error).
- This may result either in the amendment or correction of the prior order, or a new decision regarding the previously-pending appeal or motion.

MOTIONS TO REOPEN

Motions to Reopen

- Section 240(c)(7) of the Act
- 8 C.F.R. § 1003.2(c)
- Can be filed by either party
- A motion to reopen is purpose-driven and is based on *new facts or circumstances* arising after the former hearing

Time and Number Limits

- 8 C.F.R. § 1003.2(c)(2)
- Section 240(c)(7)(C)(i) of the Act
- Alien may file 1 motion before BIA *or* IJ
  - Note that the DHS is not subject to limits in removal proceedings!
- Must be filed no later than 90 days after the entry of a final administrative decision
- Exceptions to both time and number limits

Time Limits Relating to the Final Administrative Order

- The "entry" of a final administrative order refers "to the date that a designated adjudicator renders a binding decision."
  - ***Matter of Goolcharan***, 23 I&N Dec. 5, 7 (BIA 2001).
- The filing of a PFR does not extend the time limit for a MTR.
  - ***Matter of Susma***, 22 I&N Dec. 947 (BIA 1999).

Time/Number Limits Relating to the Final Administrative Order

- Alien does not appeal IJ's decision/waives appeal → decision remains final administrative order
  - ***See e.g., Matter of L-V-K-***, 22 I&N Dec. 976 (BIA 1999) (holding that an IJ's order of deportation becomes the final administrative decision upon an alien's wavier of the right of appeal).
- Motion to remand filed while an appeal is pending does not count towards the time/number limits.
  - ***Matter of Oparah***, 23 I&N Dec. 1 (BIA 2000).
- **If Reopening is granted** – start anew once a new final order is entered.

Exceptions to Time and Number Limits

- Statute— asylum; in absentia; VAWA
- Regulations— joint motions; asylum; in absentia; sua sponte; DHS motions
- Judicial/Case law— equitable tolling (IAC claims)

Statutory and **Regulatory** Exceptions

3 Statutory Exceptions

- Sec. 240(c)(7)(C)(ii)-(iv)
- Asylum & withholding
  - Based on changed country conditions
- In absentia
  - Subject to different deadlines
- VAWA
  - Battered spouse, child, parent

4 Regulatory Exceptions

- 8 C.F.R. § 1003.2(c)(3)(i)-(iv)
- In absentia
  - Motions to reopen and rescind
- Asylum/withholding
  - Based on changed circumstances in country of removal
- Joint motions
- DHS motions
  - Depending on type of proceeding

Judicial/Case Law Exception – Equitable Tolling

- Nearly all of the circuits have concluded that the time and number bars for motions to reopen are subject to equitable tolling
  - Fifth Circuit exception- The Fifth Circuit currently views requests for equitable tolling as requests for sua sponte reopening (but note unpublished cases to the contrary)- ***Mata v. Lynch***, 1353 S. Ct. 2150 (2015) is on remand to the Fifth Circuit
- Such claims often arise in the context of an ineffective assistance of counsel claim.

To consider each exception in turn…

- In absentia motions
- Asylum/withholding motions
- Joint motions
- DHS motions
- Motions based on VAWA
- Equitable tolling (IAC)

In Absentia Motions to Rescind

- This exception is in both statute and regulations.

- Motions to reopen and rescind *in absentia* removal orders are subject to different time & number limits.
  - Section 240(b)(5)(C) of the Act; 8 C.F.R. § 1003.23(b)(4)(iii).
  - No time limits on motions alleging lack of notice
  - 180-day limit on motions alleging exceptional circumstances for failure to appear
  - No number limit if R is in deportation proceedings; one motion limit if R is in removal proceedings.

Asylum/Withholding Motions

- This exception is in both the statute and the regulations.
- Section 240(c)(7)(C)(ii) of the Act (removal); 8 C.F.R. §1003.2(c)(3)(ii.
- Must be based on changed conditions or circumstances in the country of nationality or country of removal
  - May not solely include change in personal circumstances in the United States
  - *But see*, ***Chandra v. Holder***, 751 F.3d 1034 (9th Cir. 2014) (holding "that a petitioner's untimely motion to reopen may qualify under the changed conditions exception in 8 C.F.R. § 1003.2(c)(3)(ii), even if the changed country conditions are made relevant by a change in the petitioner's personal circumstances").

Joint Motions to Reopen

- This exception is only in the regulations.
- May see joint motions for PD termination or administrative closure
- Time and number limits do not apply to a motion jointly filed by both the DHS and the alien.
  - Check to ensure there is a DHS attorney signature
  - A non-opposition is not sufficient to render a motion a Joint Motion
- This exception applies to motions filed either before the Board or the Immigration Court.
  - 8 C.F.R. § 1003.2(c)(3)(iii) – (BIA)
  - 8 C.F.R. § 1003.23(b)(4)(iv) – (IJ)

DHS Motions to Reopen

- DHS motions to reopen must be based on previously unavailable evidence.
  - ***Matter of A-S-J-***, 25 I&N Dec. 893, 897 (BIA 2012)
- Removal Proceedings - DHS motions to reopen are not subject to the time and number limits (the limitations are only on "the alien").
- Deportation/Exclusion - The DHS may file a motion to reopen during the 90-day period after the final order or at any time if based on an alien's fraud or criminal act that would support termination of an asylum grant.
  - 8 C.F.R. §§ 1003.2(c)(3)(iv) (BIA) and 1003.23(b)(1) (IJ)

Motions to Reopen Based on VAWA

- This exception found only in statute.
- The Violence Against Women Act (VAWA) provides for certain relief for battered spouses, parents, or children.
  - Self-petitions & adjustment
  - Special Rule Cancellation of Removal
- Exempt from ordinary motion deadlines

VAWA Motion Deadlines

- **Removal** - an alien who is physically present in the United States must file a VAWA motion to reopen for adjustment (based on a self-petition) or special rule cancellation within one year of the entry of a final administrative order of removal.
  - Sections 240(c)(7)(A) and (C)(iv) of the Act.
  - **Exception to one year deadline: if an alien can establish extraordinary circumstances or extreme hardship to his or her child. The number limit also does not apply.**
- **Exclusion/Deportation** - There are no time or number limitations for a VAWA motion filed in *exclusion and deportation* proceedings. *See* section 240 of the Act, Note 1.

Equitable Tolling of the Time & Number Limits

- **Standards for equitable tolling the time & number limits**
  - Usually applies to ineffective assistance of counsel claims
  - Apply circuit court case language
- **Diligence** - The threshold issue is whether the alien has established due diligence in pursuing the case during the time sought to be tolled.

Diligence

- Primary issue is whether the alien has shown diligence in filing the motion raising the IAC claim
  - The "time sought to be tolled" is the motion time limit.
  - Why does the alien state he/she did not file the MTR within 90 days?
  - Was he/she prevented from filing the MTR by the prior, ineffective attorney?

Other Diligence Concerns

- If complaining of attorney conduct that was apparent from the BIA decision, why not raise claim sooner (i.e. in a timely MTR)?
- If complaining that attorney did not keep alien informed, has alien shown that he was in regular contact with attorney?

Applying *Lozada* & *Assaad*

- If time limit tolled, did alien meet the procedural requirements for raising an IAC claim?
  - ***Matter of Assaad***, 23 I&N Dec. 553 (BIA 2003); ***Matter of Lozada***, 19 I&N Dec. 637 (BIA 1988).
    - Affidavit setting forth agreement with counsel
    - Evidence alien informed counsel of allegations
    - Counsel given opportunity to respond
    - Complaint filed with appropriate disciplinary authorities

IAC Claims - Prejudice

- Did alien establish prejudice?
- Was the alien eligible for something that the ineffective assistance prevented him/her from pursuing or caused to be denied?
- The fact that an alien might be eligible for something now is not generally relevant.

Ineffective Assistance Claims

- May want to deny claim based on untimeliness
- Then find that even if the respondent had established that equitable tolling applied, he did not show
  - 1- compliance with ***Matter of Lozada***; or
  - 2- prejudice

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General Requirements for All Motions

- In general, there are requirements that ALL motions have to meet.
- Look at statutory/regulatory requirements
- Look at whether the motion meets substantive requirements to show that reopening is warranted
- Moving party bears burden

Case Law Relevant to Motions to Reopen

- Supreme Court decisions (pre-dating the statutory provisions):
  - ***INS v. Doherty***, 502 U.S. 314 (1992)
  - ***INS v. Abudu***, 485 U.S. 94 (1988)
- Board Precedent:
  - ***Matter of Coelho***, 20 I&N Dec. 464 (BIA 1992)
    - Movant bears a "heavy burden" to show reopening is warranted; motions to reopen are not favored
    - *But see* ***Dada v. Mukasey***, 554 US 1, 15 (2008)

Contents of the Motion – Required by Regulation

- A motion to reopen "shall 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 or other evidentiary material."
  - 8 C.F.R. § 90.11(b) (1949); 8 C.F.R. § 1003.2(c)(1) (2013)
  - The statute is virtually identical – Section 240(c)(7)(B) of the Act
    - (1) statement of new facts
    - (2) evidentiary support (affidavits or other evidence)

Material Evidence/Not Previously Available

- Regulations provide that moving party must submit evidence that "is material and was not available and could not have been discovered or presented at the former hearing." – 8 C.F.R. § 1003.2(c)(1)
  - Relates to the former hearing – this is the date of the hearing before the Immigration Judge (not the date of BIA decision).
  - Evidence should post-date the hearing, or there should be a good explanation of why it was unavailable.
  - Exception: if alien is trying to show changed country conditions and submits evidence to show what conditions were like at last hearing, then evidence may be considered.

Application for New Relief

- Where alien seeks new form of relief, an application must accompany the motion.
- 8 C.F.R. § 1003.2(c)(1) provides that a MTR "for the purpose of submitting an application for relief must be accompanied by the appropriate application for relief and all supporting documentation."
- Caveats:
  - If alien seeks to pursue an old application (and submits new evidence to support that application), this will generally suffice)
  - Might not want to rely on lack of application alone- depends on the circumstances- and check circuit law.
  - *Matter of Yewondwosen*, 21 I&N Dec. 1025 (BIA 1997) (holds that BIA may reopen even when the application has not been submitted)

Would the New Evidence Impact Result Below or Change Result?

- ***Matter of Coelho*** states that we will generally reopen if the new evidence "would likely change the result"
- Different Circuits might apply slightly differing standards – be sure to cite that Circuit's language/case law if the language differs from that in *Coelho*

Examples of New Evidence

- Cancellation of removal
  - New qualifying relative
    - Birth certificate
    - Marriage certificate
  - New or worsened health condition
    - Medical records
    - Psychologist reports
  - New evidence of educational issues
    - IEP

Examples of New Evidence

- Adjustment of status
  - R now has an approved visa petition
  - R has married and wants to reopen under ***Matter of Velarde***, 23 I&N Dec. 253 (BIA 2002); ***Matter of Lamus***, 25 I&N Dec. 61 (BIA 2009)

Examples of New Evidence

- Reopening where a conviction has been vacated or an alien's sentence has been modified
  - Alien may no longer be subject to removal
  - Alien may now be eligible for relief

Reopening where a Conviction has been Vacated

- A conviction vacated on the basis of a constitutional infirmity will serve to vacate a conviction for immigration purposes.
  - ***Padilla v. Kentucky***, 559 U.S. 356 (2010) (IAC for failure to advise alien in criminal proceedings of immigration consequences of a plea).
  - ***Matter of Adamiak***, 23 I&N Dec. 878 (BIA 2006) (a conviction vacated pursuant to a state statute for failure of the trial court to advise the alien defendant of the possible immigration consequences of a guilty plea is no longer a valid conviction for immigration purposes).

Reopening where a Conviction has been Vacated

- A conviction vacated for rehabilitative purposes or solely to avoid immigration consequences does not nullify the conviction for immigration purposes.
  - ***Matter of Pickering***, 23 I&N Dec. 621 (BIA 2003), *rev'd on other grounds by Pickering v. Gonzales*, 465 F.3d 263 (6th Cir. 2006).
- Alien seeking reopening bears burden to show conviction not vacated solely for immigration purposes.
  - ***Matter of Chavez-Martinez***, 24 I&N Dec. 272 (BIA 2007) (explaining that the alien is in the best position to know why his conviction was vacated and to offer evidence as to why it was vacated)

Examples of New Evidence

- Reopening where a sentence has been modified
  - Alien may now be eligible for relief and may no longer be subject to removal
    - ***Matter of Cota***, 23 I&N Dec. 849 (BIA 2005) (holding that a court's decision to modify or reduce an alien's criminal sentence nunc pro tunc is entitled to full faith and credit by the Immigration Judges and the Board, regardless of the court's reasons for effecting the modification or reduction) (citing ***Matter of Song***, 23 I&N Dec. 173 (BIA 2001)).

Examples of New Evidence

- Asylum claims
  - Timely motions may be based solely on changed personal circumstances
  - Untimely motions must be based at least in part on changed country conditions

Asylum Claims

- ***Matter of S-Y-G-***, 24 I&N Dec. 247 (BIA 2007) (addressing changed country conditions and *prima facie* asylum eligibility), *aff'd Shao v. Mukasey*, 546 F.3d 138 (2d Cir. 2008).
- Need to address the evidence with sufficient particularity
  - BIA properly considered: ***Marsadu v. Holder***, 748 F.3d 55, 58-59 (1st Cir. 2014)
  - BIA abused its discretion: ***Zhu v. Att'y Gen. of U.S.***, 744 F.3d 268, 272-79 (3d Cir. 2014)
- In some circuits, must accept facts alleged in declaration to be true unless inherently unbelievable.
  - ***Bhasin v. Gonzales***, 423 F.3d 977, 987 (9th Cir. 2005)
  - ***Lopez-Vasquez v. Holder***, 593 F. App'x 622, 624-25 (9th Cir. 2014).
- Make sure to conduct circuit-specific research
  - *Compare* ***Zhang v. Att'y Gen. of U.S.***, 604 F. App'x 55 (3d Cir. 2015) *with* ***Uwineza v. Holder***, 781 F.3d 797 (6th Cir. 2015).

Grant of Status by DHS

- USCIS may grant status separate and apart from removal proceedings.
  - Examples:
    - Alien has been granted LPR status
    - Alien provides evidence that he/she is the beneficiary of an **approved** Refugee/Asylee Relative Petition (Form I-730)
    - Alien has been granted U-visa (8 C.F.R. 214.14(c), (f))
  - DHS response may determine whether to remand or terminate

Reopening for Change in Law

- The change in law must be **significant**.
  - ***Matter of G-D-***, 22 I&N Dec. 1132 (BIA 1999).
- In ***Matter of X-G-W-***, 22 I&N Dec. 71 (BIA 1998), the Board found that, under 8 C.F.R. § 1003.2(a), it retains the discretionary power "to reopen and reconsider cases *sua sponte* in unique situations where it would serve the interests of justice" (*superseded on other grounds by Matter of G-C-L-*, 23 I&N Dec. 359 (BIA 2002)).

Change of Law Relating to Convictions

- Increasing litigation on whether certain offenses fall within the definition of an Aggravated Felony or within other categories of deportable offenses
- If intervening case law impacts the analysis of whether an offense for which the alien was convicted falls within the AgFel definition (or other ground of removability), we generally reopen sua sponte for further proceedings or possible termination.
- Be careful – Does case in question apply to the alien's conviction?

Careful: Check All Eligibility Factors and Bars

- Aliens often will present evidence to show they are eligible to apply or reapply for some form of relief, but fail to address bars evident from the prior decision or the IJ's decision below.
- Review all prior decisions and understand the issues that have been resolved previously.

Frivolous Finding

- If the alien applied for asylum below, did IJ make a frivolous finding?
- Check the Board decision on appeal to verify whether the frivolous finding was upheld.
- If there is a frivolous finding that has been upheld on appeal, the alien "shall be permanently ineligible for any benefits under this Act."
  - Section 208(d)(6) of the Act.
- Also, the alien can still qualify for withholding or CAT.

Voluntary Departure Bar

- Check to see if VD was reinstated by the Board.
- If the alien did not depart during the VD period granted, he/she may be barred from pursuing certain forms of relief for 5 years under former section 244(e) of the Act (deportation cases) or 10 years under section 240B(d)(1)(B) of the Act (removal cases).
- Applies to the following forms of relief:
  - Further eligibility for VD
  - Cancellation of Removal
  - Adjustment of Status (under 245 or 247)
  - Does not preclude from applying for asylum, w/h, or CAT

Voluntary Departure Bar (cont'd)

- Issues surrounding the VD Bar differ depending on whether the January 2009 regulations apply or if the VD grant was prior to promulgation of the regulations
- Board precedents regarding the VD Bar:
  - ***Matter of Velasco***, 25 I&N Dec. 143 (BIA 2009) (VD bond)
  - ***Matter of Gamero***, 25 I&N Dec. 164 (BIA 2010) (reinstatement)
  - ***Matter of Zmijewska***, 24 I&N Dec. 87 (BIA 2007) (addressing aliens who were unaware of the VD order or physically unable to leave)

Addressing VD Issues

- 2009 Regs:
  - If the motion to reopen was filed within the 90-day period but after the alien's voluntary departure period expired, the VD-bar will likely apply and should be considered in addressing eligibility.
    - Did the alien get all the advisals required?

Summary of Approach for Motions to Reopen

- Is the motion timely or untimely; does it fall within an exception?
- What does the alien/DHS seek?
- Is there an opposition or an affirmative non-opposition?
- Is the MTR supported by previously unavailable evidence?
- Does the new evidence establish that result will likely change or that alien is prima facie eligible for new relief?
  - No bars evident

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SUA SPONTE AUTHORITY TO REOPEN OR RECONSIDER

Sua Sponte Discretion Limited to Exceptional Circumstances

- If alien demonstrates new eligibility for relief, but does not otherwise fall within any exception to the time or number limits, the Board may reopen sua sponte in its discretion
- *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997)
  - Sua sponte reopening is "limited to exceptional circumstances and is not meant to cure filing defects or circumvent the regulations, where enforcing them might result in hardship."
- Board considers the totality of the circumstances, including whether the DHS has responded/opposed the motion

Sua sponte Reopening or Reconsideration

- Board's sua sponte authority is discretionary
- IJ and Board on their own motion may reopen or reconsider any case in which they have rendered a decision.
  - 8 C.F.R. § 1003.2(a) (BIA)
  - 8 C.F.R. § 1003.23(b)(1) (IJ).

Recent use as a "Catch-All"

- Increase in number of motions asking Board to reopen sua sponte if motion does not meet the requirements for reopening
- Address the request, but Board will not exercise discretion unless general criteria are met.
- Also, Board will not generally exercise its discretion where the alien is statutorily ineligible for the relief he/she seeks.

Cases We Often Reopen Sua Sponte

- Change in law
- Vacated conviction/modified sentence
- Grant of status by USCIS
- Approved visa petition with serious humanitarian issues

SPECIAL CONSIDERATIONS

Motion to Reissue

- Motions to Reissue a Board Decision
  - An alien most often requests reissuance of a decision of the Board if there is a claim that it was not received, so that the time for filing a PFR with the Circuit Court or the period of VD begins again.
- Board generally treats this as a Motion to Reopen in order to reissue the decision
  - If the motion is untimely, the Board will generally use sua sponte authority to reopen, if it is determined that reissuance is warranted.
- Paralegals process most of these where the record/evidence clearly shows error by the Board in serving the Board's decision.

Board Will Often Grant Motion to Reissue When…

- **(1) There was an error in serving the Board decision**
  - Sent to wrong address of alien/attorney
  - A change of address or EOIR-27 may have not been associated with ROP before mailing decision.
  - The address may have been incomplete/erroneous.

Board Will Often Grant Motion to Reissue When…

- **(2) Claim non-receipt/notice of BIA decision**
  - If record shows we properly mailed the decision to address of record and decision not returned to BIA, whether we grant may depend on Circuit and what evidence of non-receipt has been presented by alien/attorney (for example, an attorney affidavit may be persuasive).

Processing Reissued Decisions

- Must attach a photocopy (white paper, not buff) of the decision that is being reissued to the reissuance order
- This ensures that the proper decision is attached (should not expect C.O. staff to make that determination, esp. in cases where there are multiple BIA decisions)
- Put note in "Instructions to Docket" to include attached decision with signed order
- Decision Code = "OTH"

Motion to Reopen and Reinstate

- Might be based on IAC
  - Example: failure to file an appellate brief
- Motions are granted with "interlocutory" orders
- Briefing order set
- Special circulation sheets

Motions to Administratively Close

- Used to temporarily remove a case from an IJ's active calendar or from the Board's docket
- Traditionally used only where proceedings are still pending and there is no final order yet
- Requested on a regular basis with motions to reopen and can be granted on a case-by-case basis
- Can be granted even when one party objects
- Sometimes agreed to by the DHS
- *See*:
  - ***Matter of Avetisyan***, 25 I&N Dec. 688 (BIA 2012);
  - ***Matter of Lopez-Barrios***, 20 I&N Dec. 203 (BIA 1990);
  - ***Matter of Amico***, 19 I&N Dec. 652 (BIA 1988).

Motions to Terminate

- Constitutes a conclusion of proceedings
- Absent a successful appeal of that decision or a motion, the DHS would be required to file another charging document to initiate new proceedings.
- Often requested with motions to reopen and can be granted on a case-by-case basis
- Sometimes agreed to by the DHS
- Usually granted "without prejudice"
- Appropriate action if someone has been granted status, including U-visa (nonimmigrant status)
  - See 8 C.F.R. §§ 214.14(c)(5)(i), (c)(6)

Provisional Unlawful Presence Waiver

- 8 C.F.R. § 212.7(e)
- Form I-601A
- For aliens who must travel abroad to obtain a visa from the Department of State

Motions to reopen based on DACA and Other Deferred Action

THE END

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** **The foregoing presentation is intended for internal Board use only, is intended to be used merely as a training tool, and is not intended to represent official policy of the Department of Justice or the Board of Immigration Appeals**