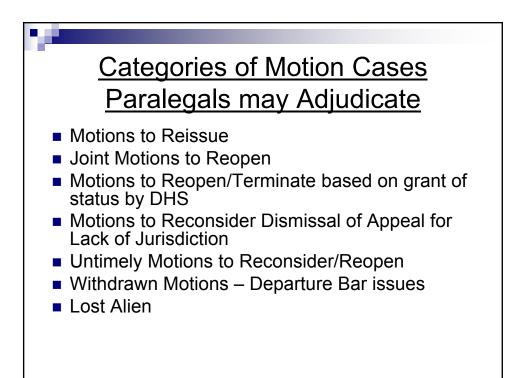
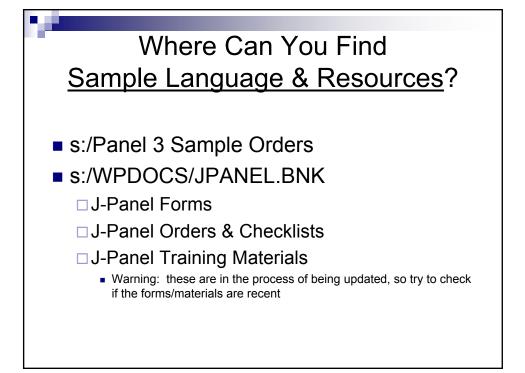
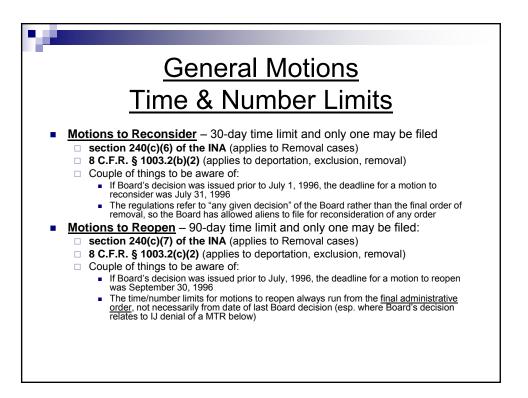


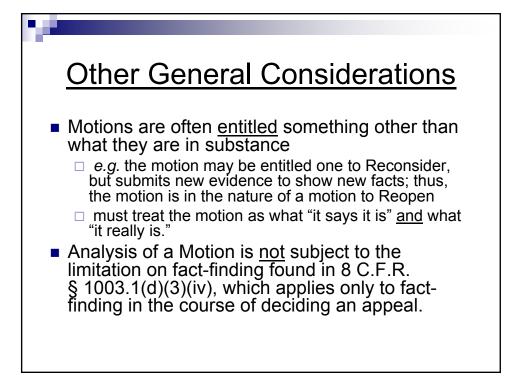


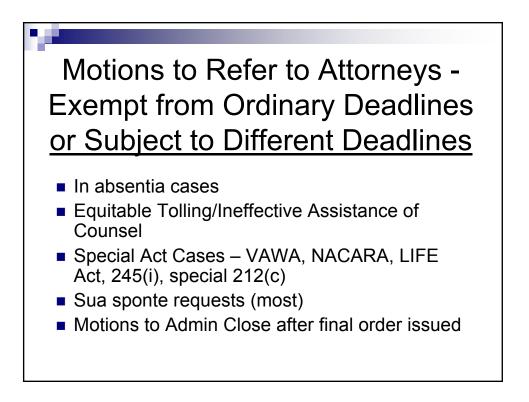
- After the Clerk's Office staff refers cases to the Paralegals (on green sheet), the Paralegal reviews and determines if the case should be referred to an attorney
- Paralegals also find cases while Screening that fall within the categories of cases they may adjudicate
- Paralegals draft many straightforward orders in motions cases involving Jurisdictional issues, plus stay orders where a detained alien's motion is pending and deportation or removal is imminent
- Paralegals refer Motion cases that are not appropriate for PL adjudication to attorneys for adjudication



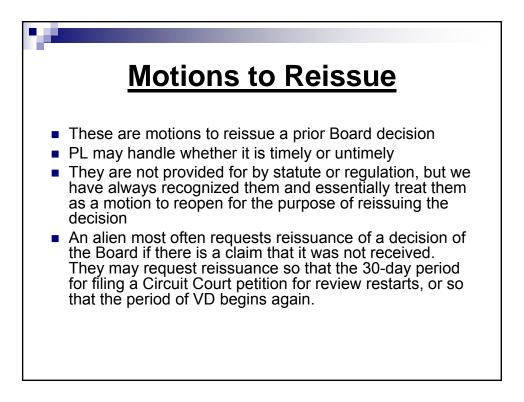






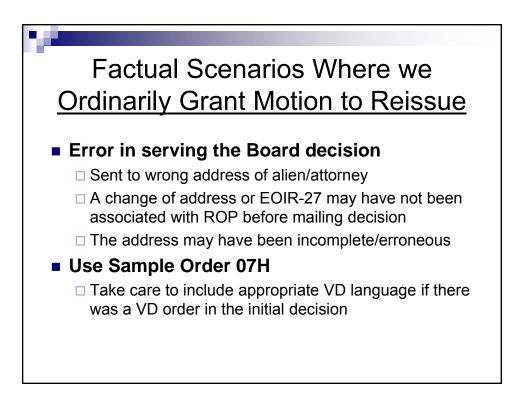


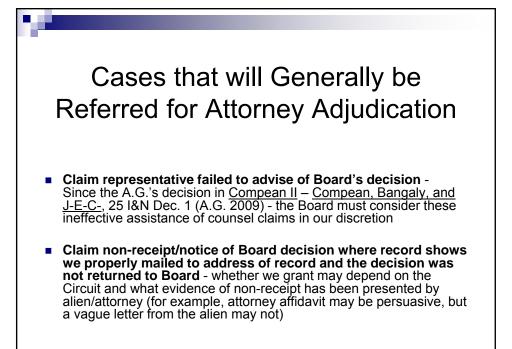
MOTIONS THAT PARALEGALS ADJUDICATE

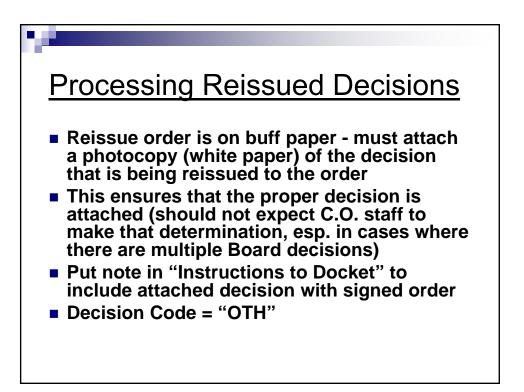


Which ones are Adjudicated by Paralegals?

- Paralegals process the vast majority of Motions to Reissue, where the record/evidence clearly shows error by the Board in serving the Board's decision.
- Motions that are not straightforward or do not clearly reflect a Board error are generally referred to J&M attorneys for adjudication

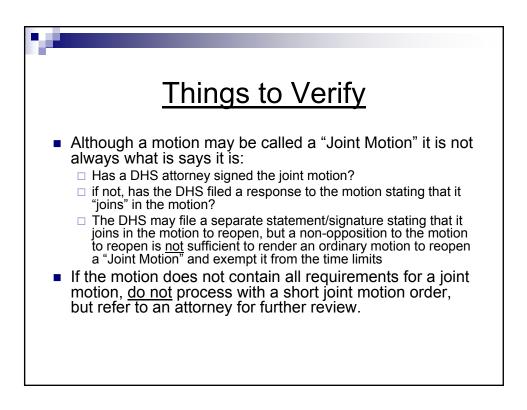






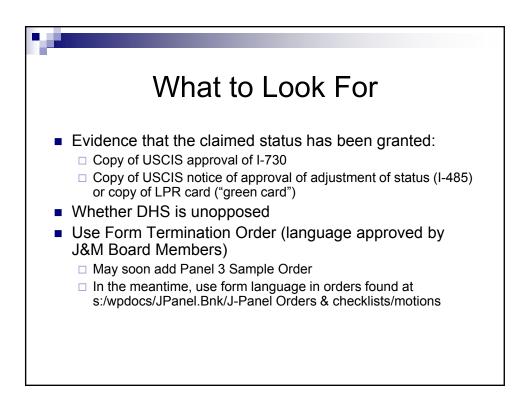


- This is a category of <u>Untimely</u> Motions to Reopen that falls within an exception set forth in the federal regulations. 8 C.F.R. § 1003.2(c)(3)(iii).
- Despite time and number limits, this section allows a motion to reopen that is "[a]greed upon by all parties and jointly filed." *Id.*
- Use Sample Order 27E generally no modification
- BUT if the parties request termination instead of remand, should modify order to terminate the proceedings instead of remanding to Immigration Court
- May see motions relating to DHS exercise of prosecutory discretion, and there should be guidance on processing these cases soon.



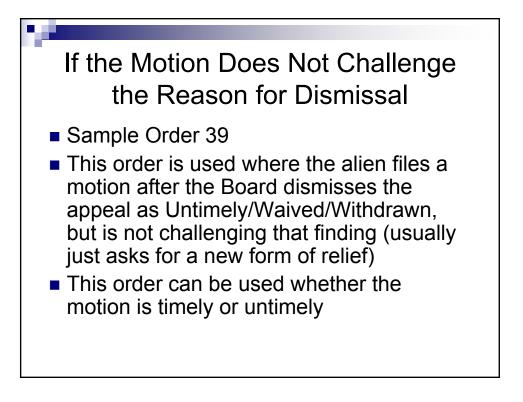
Motions to Reopen and Terminate based on grant of status by DHS

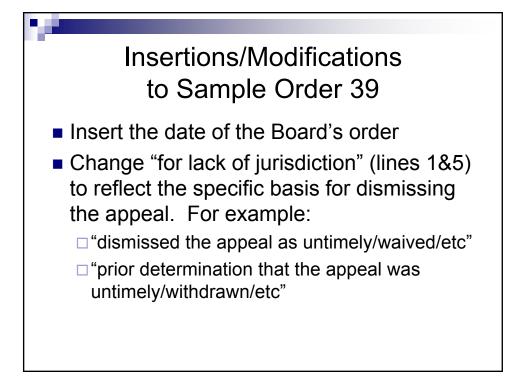
- These Motions may be Timely or Untimely
- These may also sometimes come in as joint motions, which will be granted, but we include termination language (instead of remanding)
- Common categories:
 - □ **I-730** granted, and alien granted asylee status even though this is a temporary status, it usually becomes permanent
 - LPR status granted through adjustment this most often arises where an "arriving alien" has been able to pursue adjustment of status with USCIS even though there is an outstanding order of removal

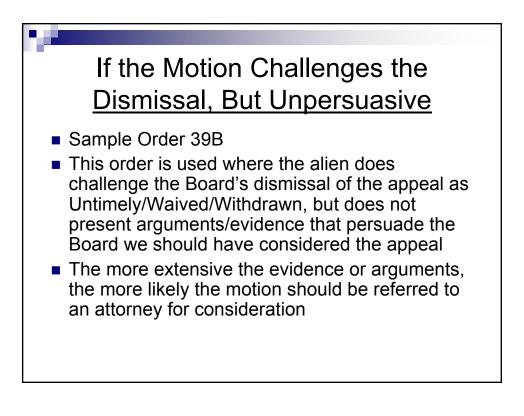


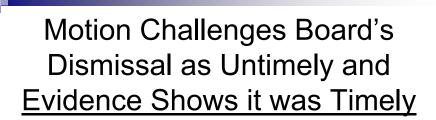
Motions to Reconsider/Reopen <u>Dismissal of Appeal for</u> <u>"Lack of Jurisdiction"</u>

- These are usually Timely MotionsMost often, alien requests reconsideration of dismissal of Appeal as Untimely
 - May also relate to dismissal as Waived
 - May also relate to dismissal as Withdrawn
- Sample Orders 39 and 39B-D Warning: these are in the process of being updated, but in the meantime reference to "lack of jurisdiction" should be changed
 - We should specify the particular basis of dismissal (untimely, waived, etc.)

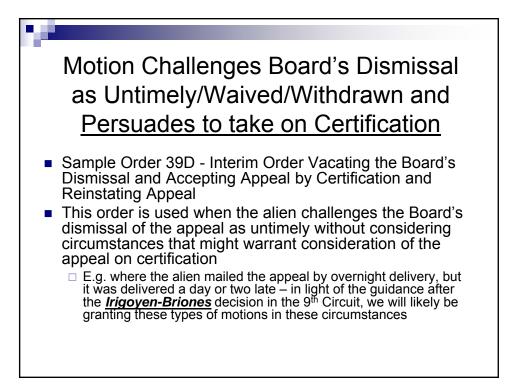






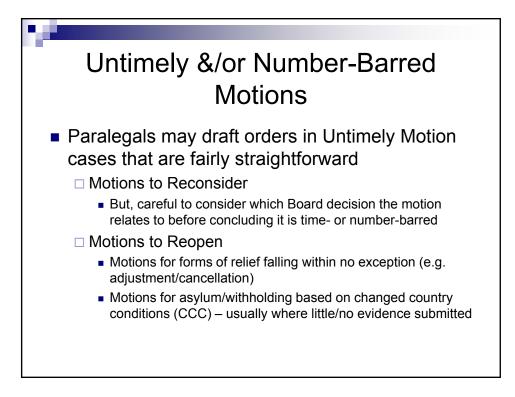


- Sample Order 39C Interim Order Vacating the Board's Untimely Dismissal and Reinstating the Appeal
- This order is used when the alien challenges the dismissal as untimely and has evidence that the NOA was actually received by the Board by the due date:
 - May show that the due date was calculated incorrectly by the Board
 - May present evidence (e.g. FedEx printout) showing that C.O. signed for the NOA on or before the due date, but for whatever reason the C.O. did not date-stamp it on that date



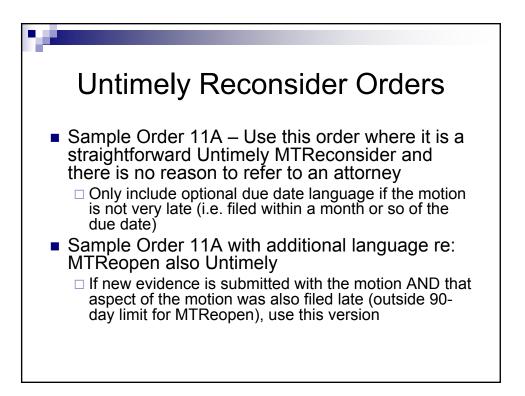
Attorney Referral

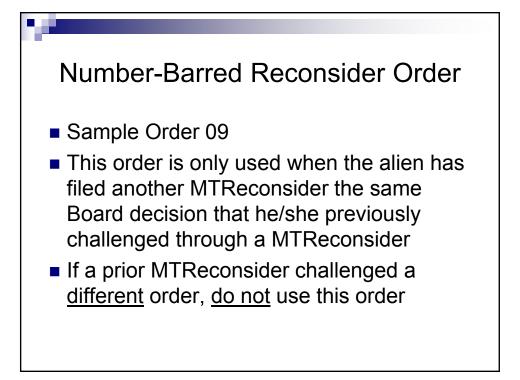
- Where a motion to reconsider challenges dismissal of appeal as waived (and raises a claim that any waiver was not knowing and intelligent) or dismissal of appeal as withdrawn (especially if based on removal), these motions should be referred to an attorney for adjudication
- Challenges to Untimely dismissals may also involve more complex issues that warrant referral for Attorney adjudication

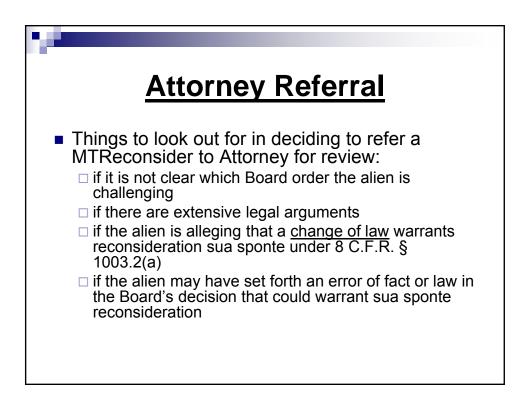


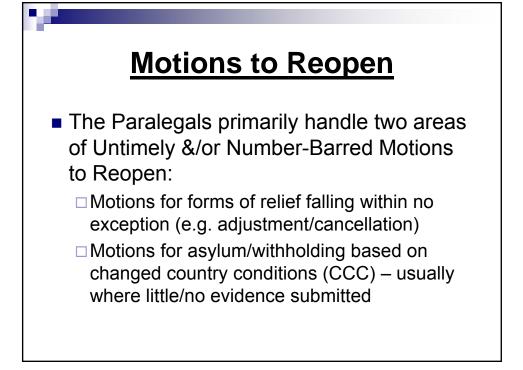
Motions to Reconsider

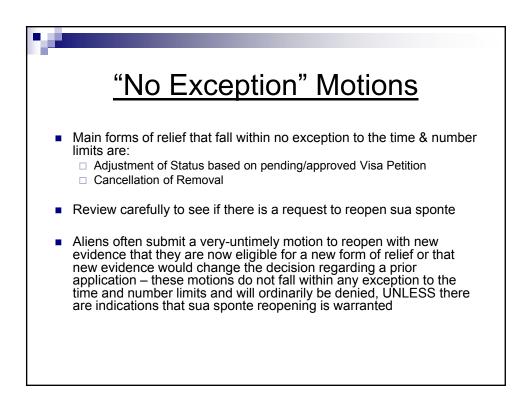
- Unlike for Motions to Reopen, neither the statute nor the regulation contains an exception to the time or number limits for motions to reconsider
- However, the regulations allow a motion to reconsider "any given decision" of the Board, so even if the alien has previously filed a MTReconsider <u>a prior Board</u> <u>decision</u>, the current MTReconsider will not be numberbarred, and will be timely if filed within 30 days of the decision the alien seeks to challenge

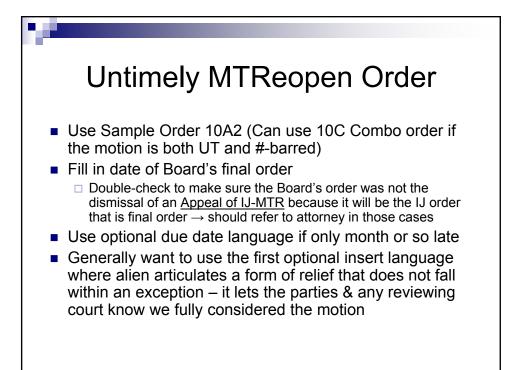


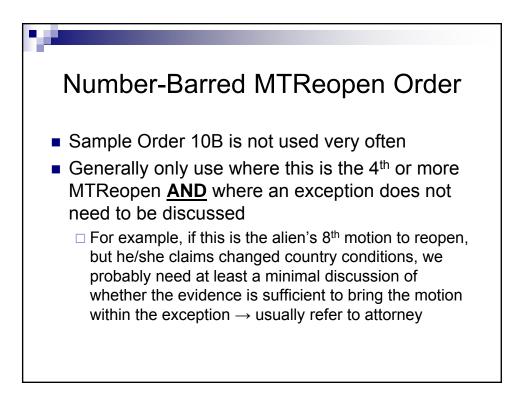


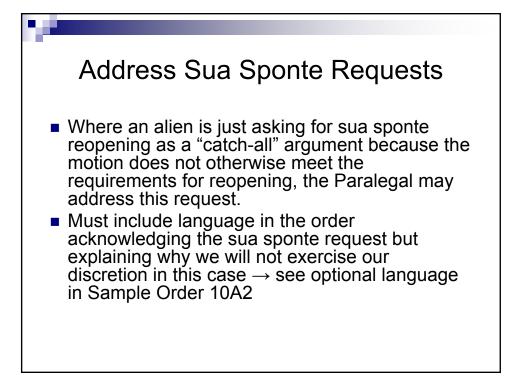


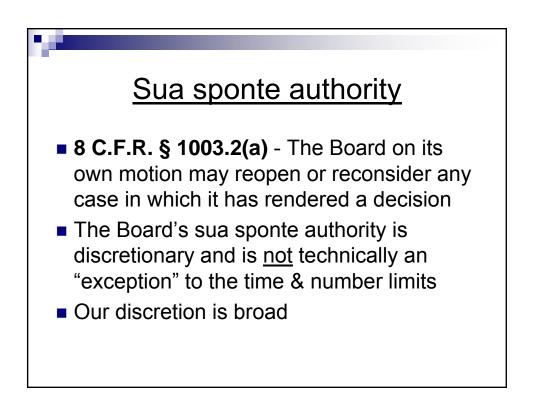


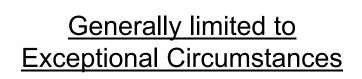




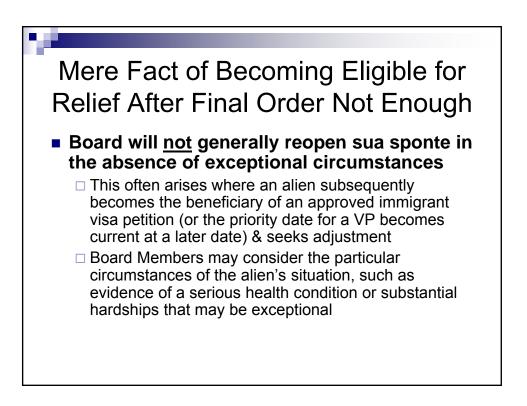






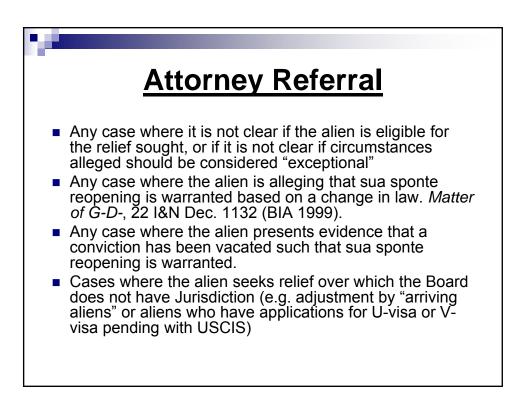


- If alien demonstrates new eligibility for relief, but does not otherwise fall within any exception to the time or number limits applicable to motions to reopen, the Board may consider reopening sua sponte
- Matter of J-J, 21 I&N Dec. 976 (BIA 1997), the Board held that power to reopen or reconsider cases on its own motion is "limited to exceptional circumstances and is not meant to cure filing defects or circumvent the regulations, where enforcing them might result in hardship."



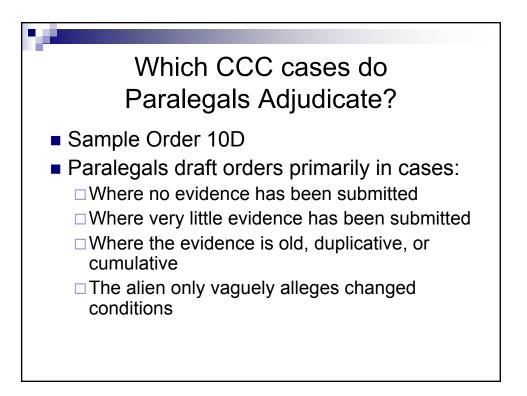
If <u>not</u> Eligible, Board will not Exercise Sua Sponte discretion

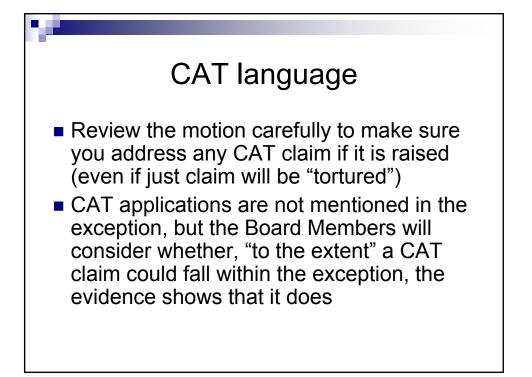
- If review of the motion/record reveals that the alien is not statutorily eligible for the relief he/she seeks → This may not be a simple determination, and case may need to be referred to Attorney
- Will not even reach the question of whether there are exceptional circumstances that might otherwise warrant exercising our discretion to reopen sua sponte, if no relief could be sought upon reopening

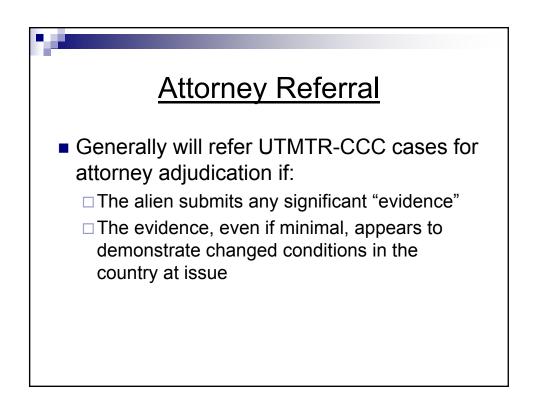


Change Country Conditions UT Motions

- This is an exception to both the time and the number limits under the statute and the regulations:
 - Section 240(c)(7)(C)(ii) of the Act refers to changed country conditions arising in the country of nationality
 - 8 C.F.R. § 1003.2(c)(3)(ii) refers to changed circumstances arising in the country of nationality
 - □ For all intents and purposes, this is the same standard, and the change must have arisen in the country of nationality







Withdrawn Motions Handled by Paralegals

- Paralegals may still draft orders in cases where an alien or his/her representative has affirmatively submitted a written request to withdraw the motion
- Use Sample Order 03A
- This order cites 8 C.F.R. § 1003.4 (which applies to Appeals) because there is no section of the regulations that relates to withdrawal of motions, except by departure

