

MOTIONS TO REOPEN GUIDE

Overview

A Motion to Reopen (MTR) is a legal filing that asks the court to undo a deportation order and open your case back up so that you can submit new evidence, apply for a new form of relief, or have another chance because your first proceeding was unfair for some reason.

Requirements

The court will only reopen your case for a **really good reason!** Some of the most common reasons for filing a motion to reopen are when:

- ➔ The Immigration Court did not notify you or your attorney of the hearing.
- ➔ The situation in your country has changed and it has become dangerous for you to return.
- ➔ There is new information that was completely unavailable and unobtainable at the time of your last hearing. (Example: the criminal court vacated a conviction after you were ordered removed because of it).
- ➔ You were eligible for a form of relief that the immigration judge did not explain to you. (Example: The immigration judge did not ask if you were afraid of torture in your home country).
- ➔ You are now eligible for a form of relief based on new circumstances in your life. (Example: You are now eligible for a green card based on a family member).
- ➔ Your previous attorney made a mistake and you were harmed based on that error. (Example: He did not file an application for relief).



The motion should include **new** facts that came to light *after* the court ordered you deported. You will have to show that the new information is **material** (really important) and **was unavailable** when the judge ordered you deported.

If you are arguing that you did not have the opportunity to apply for relief in your case, you will have to show that the judge did not fully explain your options. Otherwise, you can try to show that your eligibility for the relief now is based on new circumstances that came up after your case was completed.

Deadlines and Number of Motions Allowed

Under the law, you are only allowed **ONE** motion to reopen the proceedings. So, if you are still expecting more documents or if you think that you might need to have this option in the future, then you may want to wait until you have all of the evidence that you want the court to see before filing your motion.

BUT, keep in mind that the motion **must normally be filed within 90 days** of date of your deportation order, with only some exceptions. So, when deciding whether to file a motion to reopen, you should think about the deadline and the fact that you probably only have **ONE chance** to ask the courts to look at your case again.

1 Motion 90 Days

Exceptions to the 90 Day Time Limit

- ➔ There is no time limit for a motion to reopen based on changes in your country that now make it dangerous for you to return.
- ➔ There is no time limit if the immigration court failed to tell you or your attorney about your hearing.
- ➔ There is no time limit if you were ordered deported before September 30, 1996.
- ➔ There is a 6 month deadline for a motion based on *extraordinary* circumstances, such as disability, major illness, or ineffective assistance of counsel.
- ➔ There is a 1 year deadline for a motion to reopen based on eligibility for relief as an abused or battered spouse of a U.S. Citizen or Permanent Resident.

If more than 90 days have passed since you were ordered deported and none of the exceptions apply to your case, you can try to persuade the court to exercise its power to **“toll”** the deadline or use its power to reopen **“sua sponte.”**

First, the court can “toll”, which basically means “excuse the lateness”, if (1) you did not know that something had gone wrong in your hearing, and (2) you took immediate action once you discovered it. Or, you can ask the court to “sua sponte”, which basically means “on its own”, reopen your case because it is the fair, just, or the efficient thing to do. It is always difficult to persuade the court to reopen on its own or to excuse the lateness, so make sure to explain (1) when you discovered the problem, (2) how quickly you acted to fix it, and (3) why it is fair or efficient to reopen your case.

What to File with the Court

The package that you send to the court should include the following:

(1) Motion to Reopen

To persuade the court to reopen your case, you will need to send a written brief explaining *why* your situation justifies allowing new evidence into your old case and why the immigration judge should look at your case again. There is an outline for a good motion to reopen attached at the end of this guide.

(2) Evidence

In addition to the motion itself, you will need to attach **ALL evidence** that might help persuade the court to reopen your case. If you are asking for relief, then you should attach a copy of the **completed application** and other documents that prove that you are actually eligible for the relief.



We recommend that you review the other Florence Project guides to figure out what evidence you will need to prove your eligibility for a certain form of relief. Once you have all of those documents together, each piece of evidence should be attached to the motion and separated by a blank piece of paper marked A, B, C, D, etc. You can also write out a separate Table of Exhibits at the end of your motion and include that as a sort of guide to the new documents that you are submitting:

- Exhibit A: Marriage Certificate
- Exhibit B: Wife's Birth Certificate
- Exhibit C: My Visa
- Exhibit D: I-130 approval notice

(3) Fee Waiver Request



If you are unable to pay the cost of the motion to reopen, then you should attach a fee waiver request, which is the EOIR-26A form. In 2012, the fee for a motion to reopen or an appeal of a motion to reopen was \$110.00.

Filing the Motion and Serving the Government Attorney

It can be tricky to figure out where to send your motion. If you or your attorney filed an appeal to the Board of Immigration Appeals, then your motion should probably be sent to them at:

BIA-Clerk's Office
PO Box 8530
Falls Church VA 22041

If not, then the motion will probably go to the Immigration Court where you were ordered deported. The Immigration Court hotline, 800-898-7180, often has the address of the court that deported you. Even if you are currently in immigration proceedings somewhere else, you should still send the motion to the court that made the final decision in your earlier immigration proceedings.

You then need to make **two identical photocopies** of everything. The original is for the judge, one copy is for the government attorney, and one copy is for you. You will probably need to do a little bit of research to find the address for the government lawyers in the town where you were ordered deported if it happened before you were detained. Once you have that, make sure to attach a **certificate of service** to all three packets, saying:

I [your name] swear that I provided a copy of this package to the government attorney by
mailing it to (insert address) on [date].

Stay of Deportation

In general, a late-filed motion to reopen will NOT automatically stop your deportation unless the motion is based on the Immigration Court's failure to notify you or your attorney of your hearing. To ask Immigration and Customs Enforcement (ICE) not to deport you while your motion to reopen is pending, you will need to file a separate "Motion to Stay Removal" to the Board of Immigration Appeals and give ICE an I-246 form, which cost \$155.00 in 2012.



Motions to Reopen Guide was prepared and updated by the staff of the Florence Immigrant & Refugee Rights Project and was written for immigrant detainees in Arizona who are representing themselves pro se in their removal proceedings. This guide is not intended to provide legal advice or serve as a substitute for legal counsel. The Florence Project is a nonprofit legal services organization and does not charge for its services to immigrant detainees in Arizona. This guide is copyright protected but can be shared and distributed widely to assist indigent immigrants around the country. All of our guides are available to download on our website: www.firrp.org. We kindly ask that you give credit to the Florence Project if you are adapting the information in this guide into your own publication.

Motion to Reopen Outline

→ Cover Page:

- Put your name, A#, and current address at the detention center in the top left hand corner of the first page.
- Write **DETAINED MOTION TO REOPEN**

→ Section 1:

- Tell the court your name, your immigration status, your country of citizenship, and your age.
 - Example: My name is Rigoberto Salazar, and I am a 25 year-old student from El Salvador with a pending deportation order.
- Tell the court the location of the immigration court and the date that you were deported.
 - Example: I was ordered deported on January 25, 2009 before the Buffalo Immigration Court in New York.
- Tell the court whether you are detained and whether you have any other pending proceedings.
 - Example: I am currently detained in Florence, Arizona and my next Master Calendar hearing is scheduled for December 1, 2012.
- Tell the court in one sentence *why* you are asking them to reopen your immigration proceedings.
 - Example: I am asking this court to reopen my immigration proceedings because my wife is a United States Citizen, I have an approved I-130, and I entered on a student visa.

→ Section 2:

- Tell the court if you are going to be seeking a new form of relief if your case is reopened.
 - Example: I will be seeking immediate relative adjustment of status based on my marriage to a United States Citizen.
- Look at the eligibility requirements for this form of relief. Explain how you meet *every single one* of the requirements for this form of relief. Refer to specific documents that you are attaching to your motion that *prove* that you are eligible for this relief.
 - Example: I am eligible for this form of relief because I entered on a student visa, I married a United States Citizen, and USCIS approved her petition for me. See Attachments A (Marriage Certificate), B (My Wife's Birth Certificate), C (My visa), D (I-130 Approval Notice).

→ Section 3:

- Identify each new piece of *new* evidence that you are now filing and tell the court why this information was *not available* for your prior hearing.
 - Example: We got married six months after I was ordered deported and USCIS did not approve her petition until last month. See Attachments A, D.

→ Section 4:

- Explain to the court all of the good things in your life and why it should give you this chance despite any bad things in your immigration or criminal history.
 - Example: Even though I have a misdemeanor conviction for domestic violence, I would still ask the court to give me this chance. After my arrest, I participated in anger management classes and went to counseling. Attachment E (Certificates from Classes). My wife and I have overcome our differences, and we now have a six month old newborn child together. Attachment F (Letter from My Wife), Attachment G (My son's birth certificate).
- ➔ Section 5:
 - If you are filing your motion way past the deadline, then tell the court why it serves the interests of justice, fairness, and efficiency to let you have this chance.
 - Explain to the court when you found out that something had gone wrong in previous case and your efforts to quickly act once you learned about the problem.
- ➔ Section 6:
 - Write a conclusion telling the court what you want it to do.
 - Example: I am asking for this court to reopen my case so that I can have an opportunity to apply for adjustment of status.