



Removal Defense

Online Course

American Immigration Lawyers Association

Module 7: Motions to Reopen and Motions to Reconsider

Hypotheticals

Faculty Response

Hypothetical A:

Meena Shah did not get notice of a hearing. She, pro se, submitted a change of address to DHS but did not send it to EOIR because she did not understand there was a difference in the two entities. A FOIA result shows that DHS had in its files the change of address which was received prior to the scheduled hearing date. In the Court file is the returned notice of hearing. What considerations would go into identifying the issues on the Motion to Rescind the removal order?

Faculty Response:

The single most important piece of evidence in support of Meena's Motion to Rescind is the change of address form sent to DHS and returned mail to the court file. This is because since the person was a pro se litigant, the courts have recognized the need to grant such individuals greater protections. In the instant matter DHS and the Court both had reason to believe the client had no notice and as a pro se litigant, her efforts, even though unsuccessful could be argued to be an extraordinary circumstance. The Motion to Rescind should be filed under both legal theories.

Hypothetical B:

Ravi Thakur had his hearing before the Immigration Court relating to his application for non-LPR cancellation of removal. During the hearing, his wife testified that she was suffering from cancer and that her children, ages 10 and 12, are struggling because of this. She also testified that Ravi is responsible for making sure that the children are taken care of while she undergoes treatment. The Court issued a written decision denying cancellation of removal because the court determined that while the wife's illness could be considered for purposes of cancellation,



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exceptional and unusual hardship to her children, Ravi's stepchildren cannot be considered. You know this is incorrect. What can you do?

Faculty Response:

The Immigration Judge has clearly made a legal error in determining that stepchildren cannot be considered as part of the qualifying relative for non-LPR cancellation of removal. While it is possible to file an appeal under these facts, it may also be worthwhile to file a Motion to Reconsider. A Motion to Reconsider is based on legal grounds, and seeks a new determination based on alleged errors of fact or law. See 8 U.S.C. § 1229a(c)(6); 8 C.F.R. § 1003.23(b)(3). Only one Motion to Reconsider is authorized in law and must be filed within 30 days of the date of entry of a final administrative order of removal and must be accompanied by a statement of reasons and supported by pertinent authority. See 8 U.S.C. § 1229a(c)(6); 8 C.F.R. § 1003.23(b)(1). Keep in mind that the 30-day deadline to file the appeal with the BIA is not tolled while the Motion to Reconsider is pending.