

**LEGAL RIGHTS**



**By Atty. Johnson Lazaro**

# How to Get a Second Chance in Court

try to locate you. There is no appeal of an "in absentia" removal order; it can be reviewed only through a motion to reopen.

*What kind of excuses can you make when you file MTR due to removal "in absentia.?"*

You can try to assert that you forgot to wake up in time for your removal hearing, or you can say your dog ate your car keys. However, these reasons will not sway the judge. But if the person did not receive proper notice of the removal proceedings, the motion to reopen may be filed at any time. Not receiving notice is a far more valid reason because it violates due process. The US Constitution guarantees you a right to be heard at the hearing and if you did not get any notice, then the case should be re-opened.

Now if you think that you have an "exceptional circumstance" that caused you to miss the hearing then lay it out. Motions to reopen to rescind an "in absentia" order due to exceptional circumstances must be filed within 180 days of the final administrative order. The BIA has found that heavy traffic, a foot injury, and a headache do not constitute exceptional

circumstances. However, if the person attempted to contact the immigration court on the date of the hearing or provides an explanation for why he or she did not do so and provides supporting documentation regarding the circumstances (e.g., medical records), the person may be able to establish exceptional circumstances. The BIA also has held that ineffective assistance of counsel may be an exceptional circumstance. Always consult an immigration attorney before filing this motion. It is complicated and it could be your "last bite of the apple."

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