Matter of M-M-L-J-, Respondent

Decided August 18, 2026

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

An alien is permitted to file only one motion to reopen, whether with the Immigration Court or the Board of Immigration Appeals, subject to the limited statutory exception for battered spouses, children, and parents, and equitable tolling does not apply to the number bar.

FOR THE RESPONDENT: Divyesh Gopal, Esquire, Nashville, Tennessee

BEFORE: Board Panel: MALPHRUS, Chief Appellate Immigration Judge; GEMOETS and VOLKERT, Appellate Immigration Judges.

VOLKERT, Appellate Immigration Judge:

The respondent, a native and citizen of Jordan, was issued a final order of removal on March 11, 2020, when we dismissed his appeal of the Immigration Judge's March 26, 2018, decision ordering him removed and denying relief. The respondent subsequently filed three untimely motions to reopen. All three previously filed motions were denied. The respondent has filed a fourth motion to reopen, seeking to reopen based on a Petition for Alien Relative (Form I-130) filed by his third wife. We will deny the motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

The respondent entered the United States in August 2010, as an F-1 nonimmigrant student to attend the University of Nebraska. The respondent admitted he failed to comply with the terms of his nonimmigrant status and did not attend the required academic program. In 2011, he married a United States citizen; however, as a result of domestic violence issues that included an arrest warrant issued against the respondent, the relationship ended soon after.

On October 1, 2011, the respondent was served with a notice to appear and charged with removability under section 237(a)(1)(C)(i) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1227(a)(1)(C)(i) (2006), for failing to comply with the conditions of his F-1 nonimmigrant status. On May 12, 2012, the respondent was convicted of criminal impersonation. The notice to appear was subsequently filed with the

Immigration Court on August 1, 2012. The respondent conceded the factual allegations and charge of removability, and filed an application for special rule cancellation of removal on the ground that his first wife, from whom he was divorced, had abused him. Based on inconsistencies between the respondent's evidence and the police warrants describing the incidents, as well as insufficient evidence corroborating the respondent's testimony, the Immigration Judge determined that the respondent had not met his burden of proving he experienced battery or extreme cruelty at the hands of his first ex-wife or that his removal would result in extreme hardship. We dismissed the respondent's appeal of the Immigration Judge's decision on March 11, 2020.

Thereafter, the respondent filed two untimely motions to reopen. The first motion to reopen was based on a pending Form I-130 filed by his second wife, who was a lawful permanent resident. The respondent's second motion to reopen alleged ineffective assistance of his former counsel. On October 23, 2020, we denied both motions. With respect to the ineffective assistance of counsel claim, we held that the respondent failed to demonstrate compliance with the requirements of *Matter of Assaad*, 23 I&N Dec. 553, 556–57 (BIA 2003), and *Matter of Lozada*, 19 I&N Dec. 637, 639–40 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988), and did not show prejudice. The United States Court of Appeals for the Sixth Circuit denied the respondent's petition for review of the Board's October 23, 2020, decision. *Jaradat v. Garland*, No. 20-4192, 2021 U.S. App. LEXIS 33894 (6th Cir. Nov. 15, 2021).

The respondent then married his third wife, a naturalized United States citizen. He filed his third motion to reopen based on a Form I-130 filed by his third wife. We denied the motion on October 30, 2025. Currently before the Board is the respondent's fourth motion to reopen in which he requests reopening based on the same Form I-130 filed by his third wife and again alleges ineffective assistance of his former counsel. While the respondent styles his motion as a request for us to exercise our sua sponte authority, in substance he again seeks to equitably toll the statutory time and number limitations on reopening due to ineffective assistance of former counsel, and so we construe it as such.

II. ANALYSIS

Section 240(c)(7)(A) of the INA, 8 U.S.C. § 1229a(c)(7)(A) (2024), provides: "An alien may file one motion to reopen proceedings under this section, except that this limitation shall not apply so as to prevent the filing of one motion to reopen described in subparagraph (C)(iv)."[1] The statutory language provides the starting point for our review of the number bar. *Lamie v. United States Trustee*, 540 U.S. 526, 534 (2004). The plain language of the statute is clear—aliens are permitted to file one motion to reopen, with a statutory exception for battered spouses, children, and parents. *See Tapia-Martinez v. Gonzales*,482 F.3d 417, 421 (6th Cir. 2007) (holding that the INA "provides that an alien who is ordered removed may file only one motion to reopen"); *see also Garcia Morin v. Bondi*, 152 F.4th 626, 632–33 (5th Cir. 2025), *cert. denied*, 224 L.Ed.2d 498 (Apr. 20, 2026) (holding that the INA makes clear that an alien is only permitted to file one motion to reopen and that this rule is binding unless the single enumerated exception applies); *Djie v. Garland*, 39 F.4th 280, 283–85 (5th Cir. 2022) (same).[2]

Thus, we hold that an alien is permitted to file only one motion to reopen, whether with the Immigration Court or the Board, subject to the limited statutory exception for battered spouses, children, and parents. *See also* 8 C.F.R. § 1003.2(c)(2) (2026). The policy purpose behind this rule is rooted in "Congress's decision to impose a finite restriction on reopening motions [that] reflects a key background principle: finality." *Garcia Morin*, 152 F.4th at 633. "[T]he number bar represents Congress's attempt to balance aliens' interest in having 'a fair opportunity to develop and present their respective cases' with the 'strong public interest in bringing litigation to a close.'" *Id*. (quoting *INS v. Abudu*, 485 U.S. 94, 107 (1988)).

Although the number bar precludes the filing of more than one motion to reopen, the respondent has now filed four motions to reopen. We deny the respondent's motion on this basis.

The respondent argues that equitable tolling of the number bar should be applied to his motion to reopen based on ineffective assistance of his former counsel. The Sixth Circuit has not determined whether equitable tolling applies to the INA's number bar on motions to reopen. *Tapia-Martinez v. Gonzales*, 482 F.3d at 422–23 (noting that, although the Sixth Circuit has applied the doctrine of equitable tolling to time-barred motions, it has never

[1] The exception in section 240(c)(7)(C)(iv) of the INA, 8 U.S.C. § 1229a(c)(7)(C)(iv), provides a "[s]pecial rule for battered spouses, children, and parents." To qualify for this special rule, an alien must satisfy four strict requirements. The respondent does not assert that this exception applies to the current motion to reopen.

[2] The respondent's motion does not request reopening for asylum and related relief based on changed country conditions or circumstances. Thus, we do not consider whether the number bar applies to such motions.

held that equitable tolling applies to the number bar for reopening). We hold that the INA's number bar on motions to reopen is not subject to equitable tolling.

As the Fifth Circuit explained in holding that equitable tolling does not apply to the number bar:

> The INA's text could not be clearer: 'An alien may file one motion to reopen proceedings under this section, except that this limitation shall not apply so as to prevent the filing of one motion to reopen described in subparagraph (C)(iv).' 8 U.S.C. § 1229a(c)(7)(A). Congress's rule-creating provision *itself* specifies there's just one exception. Because the statute lays out a mandatory rule and only one enumerated exception, the statute's silence on *further* exceptions implicitly rules them out.

Garcia Morin, 152 F.4th at 632 (citation modified).

The Fifth Circuit examined the history of equitable tolling in depth and concluded that there is no basis for applying equitable tolling to the INA's number bar for motions to reopen. *Id.* at 632–34.[3] The court explained that a number bar "involves a 'significant difference'" from a statute of limitations, *id.* at 633 (quoting *Jones v. Hendrix*, 599 U.S. 465, 491 (2023)), and "reading an equitable exception into a numerical cap on motions to reopen is an altogether different undertaking." *Id.* at 632. "The Supreme Court made this very point when contrasting AEDPA's statute of limitations with AEDPA's restrictions on second-or-successive petitions." *Id.* In *Jones*, the Supreme Court of the United States explained that, in contrast to "[s]tatutes of limitations [which] merely govern the *timeframe* for bringing a claim," numerical limits "constitute a modified res judicata rule . . . and thus embody Congress's judgment regarding . . . the appropriate balance between finality and error correction." 599 U.S. at 491 (internal citation omitted).

The Fifth Circuit found that the reasoning in *Jones* also applies in this context. "Whether restricting the number of habeas petitions or the number of motions to reopen, a number bar is a substantive restriction on a petitioner's ability to obtain relief—an intentional restraint on the petitioner's cause of action." *Garcia Morin*, 152 F.4th at 633 (citation modified).

[3] In *Garcia-Morin*, the Fifth Circuit discusses equitable tolling authority in the context of its Article III judicial authority, observing that "Congress usually leaves in place 'courts' traditional equitable authority' to pause the timer on filing an action" in regard to statutes of limitations. *Garcia Morin*, 152 F.4th at 634 (quoting *Holland v. Florida*, 560 U.S. 631, 646 (2010)). The Fifth Circuit does not identify a similar source of equitable authority for the Immigration Courts or the Board, and we know of none. The Fifth Circuit distinguished the Board's sua sponte reopening authority on this basis. *Id.* at 634–35.

"Unlike time limits, substantive limits and res judicata rules have no background equitable exceptions." *Id.*

We are not aware of, and the respondent does not identify, any legal basis for tolling a numerical limitation against which Congress was legislating when it enacted section 240(c)(7)(A) of the INA, 8 U.S.C. § 1229a(c)(7)(A), which mandates only one motion to reopen removal proceedings subject to a very limited exception. The statutory language clearly does not provide for a second motion to reopen but rather restricts the respondent to only one motion to reopen. As the Fifth Circuit explained, the key background principle for the statutory number limitation was finality, balanced against the interest in providing aliens an opportunity to present their case:

> That's exactly what Congress was doing with AEDPA's limitations, too, striking "the appropriate balance between finality and error correction." *Jones*, 599 U.S. at 491. In both instances, the number bar represents Congress's deliberate choice to preserve finality. Were a court to superimpose an equitable workaround, we would be "effectively . . . adopting a presumption against finality as a substantive value." *Ibid*. That is Congress's choice to make, not ours.

Garcia Morin, 152 F.4th at 633. We agree with this analysis and hold that equitable tolling does not apply to the number bar for motions to reopen set forth in section 240(c)(7)(A) of the INA, 8 U.S.C. § 1229a(c)(7)(A).[4] We will apply this rule in all circuits that have not yet spoken on whether equitable tolling applies to the number bar on motions to reopen. *See Matter of U. Singh*, 25 I&N Dec. 670, 672 (BIA 2012) ("We apply the law of the circuit in cases arising in that jurisdiction, but we are not bound by a decision of a court of appeals in a different circuit.").

We have considered that several circuit courts have applied equitable tolling to the motions to reopen number bar in some fashion. *See, e.g.*, *Zhao v. INS*, 452 F.3d 154, 157–60 (2d Cir. 2006) (per curiam); *Ray v. Gonzales*, 439 F.3d 582, 590 (9th Cir. 2006); *Ramos-Braga v. Sessions*, 900 F.3d 871, 876 (7th Cir. 2018) (per curiam).[5] However, these decisions provide minimal analysis on why equitable tolling applies to the number bar, and, in fairness, these courts did not have the opportunity to consider this issue in light of

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[4] As explained *infra* at 848, the Board has discretionary sua sponte authority to address legitimate injustice or potential due process concerns.

[5] In *Garcia Morin*, the Fifth Circuit observed that several circuits have addressed the number bar as a claim-processing rule, but the court rejected the conclusion that equitable tolling therefore necessarily applies. 152 F.4th at 633–34. We agree with the Fifth Circuit's reasoning in this regard.

Jones. Furthermore, having been called upon to consider a question of administrative relevance, we are persuaded by the Fifth Circuit's comprehensive analysis in *Garcia Morin*, speaking to the legislative interest in restricting motions to reopen in immigration proceedings. *See Morris v. Blanche*, 179 F.4th 489, 502 (6th Cir. 2026) (noting that the Board is an adjudicative body that exercises authority delegated to it by the United States Attorney General, including review of administrative determinations in immigration proceedings).

To that end, circuit court decisions that recognize equitable tolling of the number bar have not provided a basis for its application where Congress clearly restricted an alien's ability to pursue multiple attempts to reopen proceedings. "None of these decisions explains why we can transpose that presumption onto the number bar. And it would be *especially* incongruous to invent a non-statutory exception to the number bar when Congress showed that it knows how to write such exceptions when it wants to do so." *Garcia Morin*, 152 F.4th at 634. Congress clearly restricted the ability of an alien to file multiple motions to reopen, and while the filing deadline for such motions may be tolled, the statute mandates a limitation on the number of motions that may be filed.

Therefore, we reject the respondent's argument that ineffective assistance of counsel warrants equitable tolling of the number bar for motions to reopen, and we will deny the respondent's fourth motion to reopen as number-barred.

The Immigration Judges and the Board have independent discretionary authority to reopen a proceeding sua sponte at any time. 8 C.F.R. §§ 1003.2(a), 1003.23(b)(1) (2026). *See Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997) (holding that the Board's power to reopen or reconsider cases sua sponte is limited to exceptional circumstances and is not meant to cure filing defects or "otherwise circumvent the regulations, where enforcing them might result in hardship"). Our discretionary sua sponte authority to reopen is separate and not related to the analysis of whether a motion to reopen is number-barred. *See generally Garcia Morin*, 152 F.4th at 634 (observing that "the BIA's sua sponte authority to reopen removal proceedings has no bearing on whether courts may exercise our equitable powers in th[e] context" of equitable tolling).

Although the respondent requests that we invoke our sua sponte authority to reopen these proceedings, we decline to do so. *See Djie*, 39 F.4th at 282, n.1 (cited by *Garcia Morin*, 152 F.4th at 630 n.2, and noting that the petitioners "asked the BIA to reopen the proceedings '*sua sponte*'" and explaining that "[w]e put scare quotes around '*sua sponte*' because a reopening is not *sua sponte* where the alien requests it"). While the respondent titles his motion as "sua sponte," his substantive request seeks a statutory motion subject to an equitable tolling argument. Even assuming we recognize this as a properly styled sua sponte motion, we decline to exercise our sua sponte authority where, based on our review, there is no exceptional situation on the record before us. *See Matter of Yadav*, 29 I&N Dec. 438, 439–40 (BIA 2026) (holding that no exceptional situation exists warranting sua sponte reopening where equities, including a valid marriage to a United States citizen, were acquired years after the respondent was ordered removed).

Accordingly, the following order will be entered.

ORDER: The motion to reopen is denied.

NOTICE: If a respondent is subject to a final order of removal and willfully fails or refuses to depart from the United States pursuant to the order, to make timely application in good faith for travel or other documents necessary to depart the United States, or to present himself or herself at the time and place required for removal by Department of Homeland Security, or conspires to or takes any action designed to prevent or hamper the respondent's departure pursuant to the order of removal, the respondent shall be subject to a civil monetary penalty of up to $998 for each day the respondent is in violation. *See* section 274D of the INA, 8 U.S.C. § 1324d (2024); 8 C.F.R. § 280.53(b)(14) (2026). Further, any respondent that has been denied admission to, removed from, or has departed the United States while an order of exclusion, deportation, or removal is outstanding and thereafter enters, attempts to enter, or is at any time found in the United States shall be fined or imprisoned not more than 2 years, or both. *See* INA § 276(a), 8 U.S.C. § 1326(a) (2024).