

**Immigration Court: BIA****Case:** *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988)**Date:** April 13, 1988**Adjudicated by:** Milhollan, Dunn, Morris, Vacca, Heilman**Tags:** Immigration, representation, ineffective assistance, Motion to Reopen**Question Presented:** Motion to Reopen on basis of ineffective assistance of counsel.**Holdings:** Denied.

- MTR based on IAC “should be supported by an affidavit of the allegedly aggrieved respondent attesting to the relevant facts,” stating the agreement entered into with former counsel and the actions taken by counsel. 639
- Former counsel must be informed of allegations and allowed opportunity to respond.
- Motion “should reflect whether a complaint has been filed with appropriate disciplinary authorities regarding such representation, and if not, why not.” 639

**Rationale:** Respondent must specify reasons for MTR. No egregious circumstances have been established in this case (e.g., there was no evidence that former counsel was even engaged to write an appeal to the BIA).

**Facts:** Dominican citizen ordered deported; filed notice of appeal with BIA stating that a brief would be forthcoming. Nothing was submitted. A year later, BIA dismisses appeal.

**History of the Case:**

- **1985 IJ:** Orders deportation
- **1985:** Notice of Appeal submitted to BIA
- **1986:** BIA dismisses this for lack of argument after 1 year
- **1987:** Motion to Reopen on basis of Ineffective Assistance of Counsel.

**Appeals to Statute & Precedent:**

- **INA §241(a)(4) / 8 U.S.C. § 1251(a)(4):** Removability because of CIMT committed within 5 years of entry and sentenced to confinement for 1 year or more
- **INA §212(c) / 8 U.S.C. § 1182(c):** Relief from deportation
- **INA §244(e) / 8 U.S.C. § 1254(e):** Voluntary Departure
- ***Magallanes-Damian v. INS*, 783 F.2d 931 (9th Cir. 1986):** 5th Amendment right of due process grounds right to counsel; severe effects for IAC
- ***Ramirez-Durazo v. INS*, 794 F.2d 491 (9th Cir. 1986):** Ineffective assistance must have severe effects on presenting case in deportation proceedings.
- ***Mohsseni Behbahani v. INS*, 796 F.2d 249 (9th Cir. 1986):** Must show prejudice for IAC claim

**Discussion:**

- “Ineffective assistance of counsel in a deportation proceeding is a denial of due process only if the proceeding was so fundamentally unfair that the alien was prevented from reasonably presenting his case.” 638
- Also must show prejudice by representative’s performance. 638
- “the potential for abuse is apparent where no mechanism exists for allowing former counsel, whose integrity or competence is being impugned, to present his version of events if he so chooses, thereby discouraging baseless allegations.” 639