

Administrative Appeals Office

January 08, 2016

OFFICE: MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

BIA & AAU Non-Precedent Decisions

Reporter

2016 Immig. Rptr. LEXIS 3554 *

MATTER OF M-F-C-

Core Terms

motion to reopen, traffic, reconsider, additional evidence, nonimmigrant, incorrect, ineffective assistance of counsel, accredited representative, additional information, reconsideration motion, evidentiary record, precedent decision, additional time, prior decision, new facts, recount

Opinion By: [*1] Decision transmittal issued by: Perry Rhew, Chief, Administrative Appeals Office

Opinion

AAO Designation: D12

APPLICATION: FORM I-914, APPLICATION FOR T NONIMMIGRANT STATUS

The Applicant seeks nonimmigrant classification as a victim of a severe form of trafficking in persons. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(T)(i), 8 U.S.C. § 1101(a)(15)(T)(i). The Director, Vermont Service Center, denied the application. The Applicant filed a timely appeal to the Administrative Appeals Office, which we dismissed on the merits. The matter is now before us on a motion to reopen and reconsider. The motions will be denied.

I. APPLICABLE LAW

A motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was

based on an incorrect application of law or U.S. Citizenship and Immigration Services policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. [*2] 8 C.F.R. § 103.5(a)(3).

II. PERTINENT FACTS AND PROCEDURAL HISTORY

We issued our decision dismissing the Applicant's appeal on April 22, 2015. The Applicant submitted a motion to reopen and reconsider, requesting additional time to prepare her case.

III. ANALYSIS

On motion, the Applicant states that she is no longer represented by her former attorney because she cannot afford her legal fees and "[d]ue to ineffective assistance of counsel." The Applicant's claim, however, is not supported by the evidence required to establish ineffective assistance of counsel. Specifically, the Applicant's assertion does not include: (1) an affidavit setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to Applicant in this regard; (2) evidence that counsel whose integrity or competence is being impugned has been informed of the allegations leveled against her and given an opportunity to respond; and (3) evidence as to whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, [*3] and if not, why not. *See Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

The Applicant also requests an additional period of 33 days "to submit [her] appeal [sic] brief and additional evidence," and to "confer ... with non-profit organizations that are assisting [the Applicant] so that they can amply research the legal case precedents on this matter, address the issues that need to be addressed, and [obtain] the required documentation needed." The Applicant does not provide a new Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, reflecting that she obtained a new attorney or accredited representative. More importantly, although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that an applicant may be permitted additional time to submit a brief or additional evidence to us in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. *See* 8 C.F.R. §§ 103.5(a)(2) and (3); Form I-290B, Notice of Appeal or Motion, and form instructions.

The Applicant provides a letter of support from an organization named [redacted] [*4] that generally describes the alleged trafficking of a group of H-2B workers from the Philippines, but does not provide additional information about the Applicant's own alleged trafficking. The Applicant also includes a statement from a friend named J-D-¹ who has T nonimmigrant status. J-D- advised that the Applicant had recounted her claims of alleged trafficking to him, and asserts that he believes that the Applicant was trafficked because the Applicant's employment situation appeared similar to his. However, the Applicant has not established that the facts of J-D-'s situation are similar her own, nor does he include additional information or insight into the Applicant's own alleged trafficking beyond the information that the Applicant recounted to him. The Applicant does not otherwise provide additional statements or evidence on motion with respect to our prior decision.

¹ Footnote 1. Name withheld to protect individual's identity.

IV. CONCLUSION

The Applicant has not asserted new facts to be proved in the reopened proceeding, and does not cite binding [*5] precedent decisions or other legal authority establishing that we or the Director incorrectly applied the pertinent law or agency policy and that the prior decisions were erroneous based on the evidence of record at the time. Consequently, the Applicant, has not met the requirements for a motion to reopen and/or reconsider and the motions must therefore be denied. 8 C.F.R. § 103.5(a)(4) (a motion that does not meet the applicable requirements shall be denied).

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of M-F-C-*, ID# 15112 (AAO Jan. 8, 2016)

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