

Administrative Appeals Office

January 08, 2016

OFFICE: MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

*BIA & AAU Non-Precedent Decisions*

**Reporter**

2016 Immig. Rptr. LEXIS 3553 \*

## **MATTER OF E-C-B-**

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### **Core Terms**

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motion to reopen, reconsider, ineffective assistance of counsel, former attorney, nonimmigrant

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

### **Opinion**

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**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**

In order to properly file a motion to reconsider, the regulation at 8 C.F.R. § 103.5(a)(1)(i) requires that the motion be filed within 30 days of the unfavorable decision. Similarly, a motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. 8 C.F.R. § 103.5(a)(1). [\*2]

## II. PERTINENT FACTS AND PROCEDURAL HISTORY

We issued our decision dismissing the Applicant's appeal on April 22, 2015. The Applicant initially submitted a letter on May 26, 2015, but did not file a Form I-290B, Notice of Appeal or Motion, as required by the regulation at 8 C.F.R. § 103.5(a)(iii) until June 22, 2015.

## III. ANALYSIS

On motion, the Applicant does not specifically address the lateness of his filing, although he suggests that his former attorney "did not immediately notify me of the [AAO's] denial notice when they [sic] received it." He submits a letter from his former attorney, dated within a week of our issuance of the decision, advising him that we dismissed his appeal. The record does not reflect that there was a substantial length of time in notification to the Applicant. The Applicant also indicates that he is no longer represented by his former attorney because he cannot afford her legal fees and "[d]ue to ineffective assistance of counsel." In addition to suggesting the delay in filing his motion was due to his former attorney's failure to provide him with timely communication, the Applicant suggests that any inconsistencies in his prior [\*3] statements were the result of his former attorney's work. The Applicant's claims, however, are 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, 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).<sup>1</sup>

The Applicant's motions to reopen and reconsider are untimely. Consequently, the Applicant has not [\*4] 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 E-C-B-*, ID# 15106 (AAO Jan. 8, 2016)

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<sup>1</sup>Footnote 1. Insofar as the Applicant suggests that the filing deadlines governing his motions should be tolled due to the alleged ineffective assistance of counsel, we note that his motion makes no showing that he acted with due diligence to remedy any ineffective assistance of his former counsel. Further, without a showing that he would have prevailed on motion, his failure to timely file his motion does not necessarily equate with prejudicial ineffective assistance of counsel.