

2015 Immig. Rptr. LEXIS 8521

Administrative Appeals Office

November 23, 2015

OFFICE: MOTION OF ADMINISTRATIVE APPEALS OFFICE DECISION

BIA & AAU Non-Precedent Decisions

Reporter

2015 Immig. Rptr. LEXIS 8521 *

MATTER OF R-F-A-

Core Terms

motion to reopen, reconsider, traffic, additional evidence, severe form, incorrect, ineffective assistance of counsel, reconsideration motion, evidentiary record, prior decision, new facts, nonimmigrant

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 because the Applicant did not establish that he was a victim of a severe form of trafficking in persons, was physically present in the United States on account of such trafficking, and had complied with any reasonable request for assistance in the investigation or prosecution of acts of severe forms of trafficking in persons. 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.

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) [*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. [8 C.F.R. § 103.5\(a\)\(3\)](#).

On motion, the Applicant suggests 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." 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 [*3] 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) .

The Applicant also requests an additional period of 30 days "to submit [his] appeal [sic] brief and additional evidence," and to "confer ... with non-profit organizations that are assisting [him] 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 indicate that he has 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 [\(3\)](#) [*4] . The Applicant does not provide additional statements or evidence on motion with respect to our prior decision.

The Applicant has not asserted new facts to be proved in the reopened proceeding, and does not cite binding 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 R-F-A-*, ID# 15107 (AAO Nov. 23, 2015)

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