

2016 Immig. Rptr. LEXIS 4481

Administrative Appeals Office

March 21, 2016

OFFICE: MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

BIA & AAU Non-Precedent Decisions

Reporter

2016 Immig. Rptr. LEXIS 4481 *

MATTER OF P-F-V-

Core Terms

motion to reopen, traffic, ineffective assistance of counsel, reconsider, severe form, nonimmigrant, reconsideration motion, former attorney, classification, notice

Counsel

[*1]

Opinion By: 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 "T-1" nonimmigrant classification as a victim of human trafficking. *See* Immigration and Nationality Act (the Act) §§ 101(a)(15)(T) and 214(o), [8 U.S.C. §§ 1101\(a\)\(15\)\(T\)](#) and [1184\(o\)](#). The T-1 classification affords nonimmigrant status to victims who assist authorities investigating or prosecuting the acts or perpetrators of trafficking.

The Director, Vermont Service Center, denied the application. The Director concluded that the Applicant did not establish that he was a victim of a severe form of trafficking, that he was physically present in the United States on account of a severe form of trafficking, and that he had complied with any reasonable request for assistance in the investigation or prosecution of acts of severe forms of trafficking. We subsequently dismissed the appeal on the merits.

The matter is now before us on a motion to reopen and reconsider. On motion, the Applicant [*2] submits a brief and additional evidence.

Upon review, we will deny the motions.

I. APPLICABLE LAW

A motion to reconsider must be filed within 30 days of the decision the motion seeks to reconsider. Moreover, 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\(a\)\(1\)](#).

II. ANALYSIS

We issued our decision dismissing the Applicant's appeal on July 14, 2015. The Applicant did not file the motion until August 24, 2015. On motion, the Applicant does not specifically address the lateness of his filing, although he states that his former attorney "did not immediately notifying [sic] me of the denial notice when they received it." The Applicant indicates that he received the denial notice on July 23, 2015, approximately nine days after we dismissed his appeal. The Applicant also indicates that he is no longer represented by his former attorney because [*3] 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 indicates that any inconsistencies in his prior 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. [*4] 1988).¹

III. CONCLUSION

¹Footnote 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 [*5] 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.

The Applicant's motions to reopen and reconsider are untimely. 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 P-F-V-*, ID# 15919 (AAO Mar. 21, 2016)

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