

Administrative Appeals Office

September 12, 2017

OFFICE: MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

BIA & AAU Non-Precedent Decisions

Reporter

2017 Immig. Rptr. LEXIS 22750 *

MATTER OF R-G-B-

Core Terms

former attorney, reconsideration motion, motion to reopen, ineffective, mail, nonimmigrant, unfavorable, untimely, sufficient evidence to support, specific information, deny a motion, case file, classification, traffic, notice, notify

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 "T-1" nonimmigrant classification as a victim of human trafficking. *See* Immigration and Nationality Act sections 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 Acting Director of the Vermont Service Center denied the application and we dismissed the subsequent appeal. The matter is now before us on a motion to reopen and a motion to reconsider. Upon review, we will deny the motions as untimely submitted.

A motion must be filed within 33 calendar days of the date that the unfavorable decision was served by mail. 8 C.F.R. §§ 103.5(a)(1)(i), 103.8(b). The filing date is the day USCIS receives the motion at the

designated filing location, not the date an applicant mailed the motion. 8 C.F.R. § 103.2(a)(7)(i). We may, in our discretion, excuse an applicant's failure to file a motion to reopen before [*2] the filing period expires if the applicant demonstrates that the delay was reasonable and beyond the applicant's control. 8 C.F.R. § 103.5(a)(1)(i). However, there is no such provision for a motion to reconsider. *Id.*

On April 22, 2015, we dismissed the Applicant's appeal and served the unfavorable decision by mail. The decision stated that the Applicant may file a motion within 33 days. USCIS received the motions on June 24, 2015, which is 63 days after the service date of the unfavorable decision.

The record contains a statement from the Applicant, informing us that he is no longer represented by the attorney of record for the appeal. The Applicant describes his former attorney's assistance as "ineffective." However, the Applicant does not provide sufficient specific information about the scope of assistance the former attorney agreed to provide on the Applicant's behalf for the appeal and how the attorney's assistance was ineffective, among other bases for a claim of ineffective assistance of counsel. *See Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988). Therefore, the record does not contain sufficient evidence to support the conclusion that the Applicant's former attorney's [*3] assistance was ineffective.

Additionally, the Applicant states that his delay in submitting the motions was due, in part, to "extremely unavoidable circumstances that were beyond [his] control and no fault of [his] own."

The Applicant elaborates that his former attorney was "negligent ... by not immediately notifying [him] of the denial notice" and by "fail[ing] to send [him the] entire case file and supporting documents, thus causing further delay." However, the Applicant does not provide sufficient specific information about the length of the delay between the appeal dismissal date and the date on which his former attorney notified him of the dismissal, the date on which the Applicant received his case file, the date or dates on which the Applicant requested his former attorney to provide the dismissal notice or the case file, or any statements from the former attorney in response to the Applicant's request or requests. Moreover, the record does not contain sufficient documentary evidence, such as written correspondence or mail tracking information, to support the Applicant's statements regarding his former attorney's actions or inactions. Therefore, the record does not contain [*4] sufficient evidence to support the conclusion that the Applicant's delay in submitting the motion to reopen was reasonable and beyond his control.

Because we do not conclude that the delay was reasonable and beyond the Applicant's control, we must deny the motion to reopen as untimely submitted. Because there is no discretionary exemption for untimely submitting a motion to reconsider, we must deny it.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of R-G-B-*, ID# 869489 (AAO Sept. 12, 2017)

SEP122017_01D12101.pdf