



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 19595896

Date: FEB. 08, 2022

Motion on Administrative Appeals Office Decision

Form I-914, Application for T Nonimmigrant Status

The Applicant seeks T-1 nonimmigrant classification as a victim of human trafficking under the Immigration and Nationality Act (the Act) sections 101(a)(15)(T) and 214(o), 8 U.S.C. §§ 1101(a)(15)(T) and 1184(o). The Director of the Vermont Service Center denied the Form I-914, Application for T Nonimmigrant Status (T application), concluding that the record did not establish that the Applicant was the victim of a severe form of trafficking in persons and therefore necessarily did not establish that she was physically present in the United States on account of such trafficking. The Applicant then filed an appeal, which we dismissed finding that she had not overcome the grounds for the Director's denial. The matter is now before us on combined motions to reopen and reconsider. Upon review, we will dismiss the motions for untimeliness.

I. LAW

Applicants bear the burden of establishing eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). A motion to reopen must state new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must 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 (USCIS) policy. 8 C.F.R. § 103.5(a)(3). The motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.*

Motions to reopen or reconsider must be filed within 30 days of the decision, or 33 days if the decision is served by mail. 8 C.F.R. § 103.5(a)(1)(i), 103.8(b). However, USCIS implemented special rules on account of the current COVID-19 pandemic under which USCIS will consider appeals and motions filed on the Form I-290B, Notice of Appeal or Motion, as timely filed if filed within 63 calendar days of an unfavorable decision issued between March 1, 2020, and October 31, 2021. USCIS Alert, "USCIS Extends Flexibility for Responding to Agency Requests," (Jan. 28, 2021), <https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-3> (last visited Feb. 08, 2022); *see also* 8 C.F.R. § 103.8(b) (adding three days to filing deadlines if USCIS serves decisions or notices by mail).

USCIS may, in its discretion, excuse the untimely filing of a motion to reopen where the record demonstrates that the delay was reasonable and beyond the control of the applicant. 8 C.F.R. § 103.5(a)(1)(i). There is no comparable authority to excuse an untimely filed motion to reconsider. *See id.*

II. ANALYSIS

The Applicant acknowledges and the record demonstrates that her combined motions before us were untimely filed. We dismissed the Applicant's appeal of the Director's decision on her T application on December 22, 2020. The Applicant subsequently attempted to file her combined motions directly with the AAO 58 days later on Feb. 18, 2021, contrary to the instructions on the coversheet of our decision. We returned the motion documents and filing fee to the Applicant about five days later on February 23, 2021. The Applicant then filed her combined motions with the correct filing location approximately 10 days later on March 4, 2021, a total of 72 days after we issued our decision dismissing her appeal and after the extended 63-day deadline for filing a motion then in effect under the special rules relating to the COVID-19 pandemic. Through counsel, the Applicant requests we exercise our discretion to excuse the late filing of her combined motions which she states was the fault of a clerical error on the part of her attorney's office.

As noted, the late filing of the Applicant's motion to reconsider may not be excused. 8 C.F.R. § 103.5(a)(1)(i). With respect to her motion to reopen, the Applicant has the burden to establish that the late filing was reasonable and beyond her control and should therefore be excused. She has not met this burden, and we therefore will not exercise our discretion to excuse the late filing of her motion to reopen. We acknowledge the Applicant's explanation that the delay in filing was due to her attorney's office's clerical error. However, apart from this general assertion, the Applicant has offered no further explanation showing that her delay was reasonable and beyond her control. The record indicates that our December 2020 decision on appeal properly gave the Applicant notice concerning the 33-day deadline to file a motion to reopen or reconsider and also directed her to USCIS' Form I-290B website (www.uscis.gov/i-290b) for current information on filing fee, filing location, and other filing requirements. In addition, we specifically instructed the Applicant to not mail any motions directly to the AAO. Nevertheless, the Applicant did not attempt to file her combined motions until near the end of the extended 63-day filing period in effect at the time, and she improperly mailed them to the AAO, despite the instructions on the coversheet of our decision specifically directing her not to mail the motions there. The Applicant has offered no explanation as to what caused the clerical error by her attorney's office or why she waited until near the very end of the extended filing period before attempting to file her motions. She also has not otherwise addressed any efforts on her part to ensure that the motions were timely filed to demonstrate that the delay was reasonable and beyond her control.

Accordingly, the Applicant has not shown that her delay in filing her motion to reopen was reasonable and beyond her control, such that her untimely filing should be excused in USCIS' discretion under 8 C.F.R. § 103.5(a)(1)(i). Moreover, we have no authority to excuse the late filing of her motion to reconsider. Accordingly, we will dismiss her motions.¹

¹ We note that even if we were to find the Applicant's motions were timely or, in the alternative, that the delay in filing her motion to reopen was reasonable and beyond her control, we find no reason to disturb our previous dismissal of her

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

appeal because the relevant motion requirements were not met, as described under 8 C.F.R. § 103.5(a). Per our review of the record, the new statement and additional evidence submitted with her motions lacks sufficiently probative detail to overcome the basis for the denial of her application. Likewise, our review also indicates that the Applicant has not established that our decision was incorrect based on the evidence of record at the time.