



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

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

In Re: 21821065

Date: AUG. 15, 2022

Motion on Administrative Appeals Office Decision

Form I-129, Petition for Nonimmigrant Worker (Religious Worker – R-1)

The Petitioner, a church, seeks to classify the Beneficiary as an R-1 nonimmigrant religious worker to perform the services of an “African (Legbol) Language Media Developer.” *See* Immigration and Nationality Act (the Act) Section 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). This nonimmigrant classification allows non-profit religious organizations, or their affiliates, to temporarily employ foreign nationals as ministers, in religious vocations, or in religious occupations in the United States. *See* 8 C.F.R. § 214.2(r) (2016).

The Director of the California Service Center denied the petition, concluding that the Petitioner did not establish eligibility to classify the Beneficiary as a nonimmigrant religious worker. We dismissed the appeal. On April 3, 2020, we dismissed the Petitioner’s first motion filing, a motion to reopen the proceeding. On July 28, 2021, the Petitioner submitted a second motion filing, a motion to reconsider the matter. We dismissed its second motion filing, noting that the motion was filed “481 days after [the service of] the [April 3, 2020,] decision,” and thus determining that the motion was untimely filed.

The matter is before us on a third motion filing, a motion to reconsider the matter. The Petitioner indicates on the motion that “due to the devastation of COVID-19 on [its] Church and Ministries,” including the “complete shutdown of [it] Church and offices,” the Petitioner “could not access [our April 3, 2020, decision] that would have necessitated [its] appeal until the appeal date was past due.” The Petitioner references the U.S. Citizenship and Immigration Services (USCIS) filing flexibility policy and requests us “to reinstate [its] appeal and duly reconsider and reinstate[] [its] appeal granting [the Beneficiary] legal status to continue his ministry in [the] Church.”<sup>1</sup>

In these proceedings, it is the Petitioner’s burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012); *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010).<sup>2</sup> Upon review, we will dismiss the Petitioner’s third motion filing, a motion to reconsider the matter.

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<sup>1</sup> We note that the untimely filing was a motion, not an appeal, that the Petitioner submitted on July 28, 2021.

<sup>2</sup> If a petitioner submits relevant, probative, and credible evidence that leads us to believe that the claim is “more likely than not” or “probably” true, it has satisfied the preponderance of the evidence standard. *Chawathe*, 25 I&N Dec. at 375-76.

## I. LAW

The regulation provides: “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 [USCIS] policy.” 8 C.F.R. § 103.5(a)(3) (2022). It further states: “A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.” *Id.* We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

In addition, in response to the coronavirus (COVID-19) pandemic, USCIS has extended filing deadline for Form I-290B, Notice of Appeal or Motion. USCIS policy provides that if we or the Director issued and served an adverse decision between March 1, 2020, and October 31, 2021, then a petitioner would have 63 days to file a Form I-290B to initiate an appeal or motion. If we or the Director issued and served an adverse decision between November 1, 2021, and July 25, 2022, then a petitioner would have 93 days to file a Form I-290B.<sup>3</sup> *See also* 8 C.F.R. §§ 103.5(a)(1)(i), 103.8(b) (noting that a petitioner will receive 3 additional days to file an appeal or a motion if USCIS served the adverse decision by mail).

## II. ANALYSIS

As noted, we dismissed the Petitioner’s first motion filing on April 3, 2020. On July 28, 2021, 481 days after being served the April 2020 decision, the Petitioner filed its second motion filing, a motion to reconsider the matter. We dismissed that motion as untimely filed. The Petitioner now urges us to reconsider our adverse decision that deemed its July 2021 motion untimely. While USCIS has extended filing deadlines for appeals and motions, the Petitioner has not demonstrated that a delay of over 480 days is permissible under USCIS filing flexibility policy. As we had issued and served the decision on April 3, 2020, the Petitioner had 63 days, or until Friday, June 5, 2020, to file a motion to reconsider the matter. Its July 2021 motion to reconsider the matter is therefore untimely filed. The Petitioner has not shown that our previous motion decision, in which we dismissed its second motion filing based on untimeliness, “was based on an incorrect application of law or [USCIS] policy” or that our “decision was incorrect based on the evidence of record at the time of the [motion] decision.” 8 C.F.R. § 103.5(a)(3). As such, we will dismiss the Petitioner’s third motion filing, a motion to reconsider the matter.

## III. CONCLUSION

We will dismiss the Petitioner’s third motion filing, a motion to reconsider the matter, because its filing does not establish that we erred in our previous motion decision. *See* 8 C.F.R. § 103.5(a)(3).

**ORDER:** The motion to reconsider is dismissed.

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<sup>3</sup> *USCIS Extends Flexibility for Responding to Agency Requests*, available at <https://www.uscis.gov/newsroom/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-1> (accessed on Aug. 15, 2022).