



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

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

In Re: 21384880

Date: JUL. 22, 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 a nonimmigrant religious worker to perform services as an assistant pastor. *See* Immigration and Nationality Act (the Act) Section 101(a)(15)(R), 8 U.S.C. § 1101(a)(15)(R). This nonimmigrant R-1 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.

The Director of the California Service Center denied the petition. We then dismissed the appeal, concluding that the Petitioner failed to sufficiently demonstrate that the Beneficiary would likely work on average at least 20 hours per week as a religious worker in the United States. *See* 8 C.F.R. § 214.2(r)(1)(ii) (2019). The Petitioner filed combined motions to reconsider and to reopen the proceeding. We dismissed the combined motions as untimely filed.

The matter is now before us on a second motion filing, combined motions to reconsider and reopen the proceeding. On motion, the Petitioner urges for us to accept its first motion filing as timely. 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).¹ Upon review, we will dismiss the motions.

I. LAW

A motion to reconsider is based on an incorrect application of law or policy, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3) (2022), and the requirements of a motion to reopen are located at 8 C.F.R.

¹ 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.

§ 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

We dismissed the Petitioner's appeal on April 19, 2021. On June 29, 2021, 71 days after we dismissed the appeal and served the dismissal on the Petitioner via mail, the Petitioner submitted its first motion filing. In response to the coronavirus (COVID-19) pandemic, U.S. Citizenship and Immigration Services (USCIS) has extended filing deadline for Forms I-290B, Notices of Appeal or Motion. USCIS policy provides that if we or the Director issued 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 an adverse decision between November 1, 2021, and July 25, 2022, then a petitioner would have 93 days to file a Form I-290B.² *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).

As noted, in this case, we dismissed the Petitioner's appeal on April 19, 2021. The Petitioner had 63 days to submit a motion filing. The Petitioner's first motion filing was submitted 71 days after we dismissed its appeal. The Petitioner's first motion filing was therefore untimely. In support of the current (second) motion filing, the Petitioner acknowledges that its previous motion filing was "filed about 11 days after the period allowed," but it argues that "[g]iven these fluctuations and differing and confusing extension periods, the AAO [Administrative Appeals Office] should use its discretion to allow review of this case on the merit." The Petitioner has not shown on motion that our previous motion decision, in which we dismissed its first motion filing based on untimeliness, "was based on an incorrect application of law or [USICS] policy" or that our "decision was incorrect based on the evidence of record at the time of the initial [motion] decision." 8 C.F.R. § 103.5(a)(3). As such, we will dismiss the Petitioner's motion to reconsider the matter.

Similarly, we will dismiss the Petitioner's motion to reopen the proceeding. In support of the current (second) motion filing, the Petitioner submits a December 2021 online printout from USCIS's website, entitled "USCIS Extends Flexibility for Responding to Agency Requests." This printout explains that the Petitioner had 60 days to file a motion on our previous motion decision, because our decision was issued in April 2021, between March 2020 and October 2021. *See also* 8 C.F.R. § 103.8(b) (allowing a petitioner 3 additional days for submission if USCIS served the adverse decision by mail). This document does not establish that we have the authority to deem the Petitioner's untimely first motion filing as timely. As such, we will dismiss the Petitioner's second motion to reopen the proceeding because it does not "state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." 8 C.F.R. § 103.5(a)(2).

III. CONCLUSION

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

² *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 Jul. 21, 2022).

the Petitioner's motion to reopen the proceeding because the Petitioner has not "state[d] the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." 8 C.F.R. § 103.5(a)(2).

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed.