U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 21441006

Date: JUL. 27, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner filed a Petition for Nonimmigrant Worker, Form I-129, for the Beneficiary, seeking to classify her 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 initially approved the petition, but subsequently revoked the approval after conducting an on-site inspection of the petitioning organization. *See* 8 C.F.R. § 214.2(r)(16) (2018). The Director revoked the petition approval on multiple grounds, including the Petitioner failed to establish that the Beneficiary was working at least 20 hours a week on average as a religious worker, that her position was a qualifying religious worker position, or that the Petitioner has satisfactorily completed the on-site inspection. *See* 8 C.F.R. § 214.2(r)(1)(ii)-(iii), (16). On March 3, 2021, we dismissed the appeal, finding that the Petitioner did not properly submit an appeal, because the Notice of Appeal or Motion, Form I-290B, lacked a valid signature. On May 10, 2021, 68 days after our dismissal of its appeal, U.S. Citizenship and Immigration Services (USCIS) received the Petitioner's first combined motions to reconsider and 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 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.

[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.

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. § 103.5(a)(2). 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 Forms I-290B. 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).

Moreover, the regulation specifies that "[e]very form, benefit request, or other document must be submitted to DHS [Department of Homeland Security] and executed in accordance with the form instructions" and that "[t]he form's instructions are hereby incorporated into the regulations requiring its submission." 8 C.F.R. § 103.2(a)(1). Additionally, "USCIS will consider a benefit request received and will record the receipt date as of the actual date of receipt at the location designated for filing such benefit request" and "[a] benefit request will be rejected if it is not . . . [s]igned with valid signature." 8 C.F.R. § 103.2(a)(7)(i), (ii)(A).

II. ANALYSIS

We dismissed the Petitioner's appeal on March 3, 2021. On May 10, 2021, 68 days after we dismissed the appeal and served the dismissal on the Petitioner via mail, USCIS received the Petitioner's first motion filing at the location designated for such filing. In support of the current (second) motion filing, the Petitioner claims that the "untimely filing was due to the attorney's misunderstanding of the USCIS's Notice of Flexibility for Responding." It also submits a printout from the U.S. Postal Service (USPS), indicating that its submission arrived at a Laguna Niguel, California, location, on May 5, 2021, 63 days after we dismissed its appeal. According to USCIS record, however, USCIS received the Petitioner's first motion filing at the location designated for such filing on May 10, 2021, 68 days after we dismissed its appeal.

On motion, the Petitioner has not demonstrated that the Laguna Niguel, California, location, where it sent its first motion filing is or was the location designated for such filing. Page 7 of the Instructions for Form I-290B (version 12/02/19) specifies that a petitioner should "[u]se the chart at www.uscis.gov/i-290b-addresses to determine the correct filing address for [its] appeal or motion" and that a "Form I-290B is not considered received by USCIS unless [the petitioner] file[s] it at the proper location."[3] According to the referenced website, the Petitioner should have sent its first motion

[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. 26, 2022).

[3] *Instructions for Notice of Appeal or Motion (Form I-290B)* (version 12/02/19), available at https://www.uscis.gov/sites/default/files/document/forms/i-290binstr.pdf (accessed on Jul. 26, 2022).

filing to a USCIS mailing address in Phoenix, Arizona, not Laguna Niguel, California.[4] *See* 8 C.F.R. § 103.2(a)(1) (specifying that "[t]he form's instructions are hereby incorporated into the regulations requiring its submission)." As such, the Petitioner has not shown that USCIS received its first motion filing at the location designated for such filing within 63 days after we dismissed its appeal. Its first motion is therefore untimely filed. 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 copies of USPS records relating the delivery of its first motion filing to a California address, as well as a brief from its counsel stating: "[t]he untimely filing was due to the attorney's misunderstanding, which was beyond the Petitioner's control." The Petitioner has offered no additional evidence relating to "the attorney's misunderstanding." *See Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988); *see also Matter of Melgar*, 28 I&N Dec. 169, 170 (BIA 2020) (noting that an attorney's acceptance of responsibility for error does not satisfy the requirement to file a complaint with the appropriate disciplinary authority, particularly where the ineffective assistance allegation is provided by the same attorney). The documents the Petitioner presents on motion do not establish that we have the authority to deem its 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 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.

[4] *Direct Filing Addresses for Form I-290B, Notice of Appeal or Motion*, available at https://www.uscis.gov/i-290b-addresses (accessed on Jul. 26, 2022).