



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

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

In Re: 20233728

Date: FEB. 28, 2022

Motion on Administrative Appeals Office Decision

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

The Petitioner, a religious organization, seeks to classify the Beneficiary as an R-1 nonimmigrant religious worker to perform services as a Roman Catholic Nun. *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. In addition, the Petitioner seeks to change the Beneficiary's nonimmigrant status and to extend her stay in the United States.

The Director of the California Service Center granted the Petitioner's Petition for a Nonimmigrant Worker (Form I-129) but denied its request to change the Beneficiary's nonimmigrant status and to extend her stay in the United States.¹ The Director explained in the decision that because the Beneficiary had "reached the statutory limitations of five years as an R-1 nonimmigration," she must be "physically present outside the United States for one year" to be eligible for an extension of stay or readmission in R-1 nonimmigrant status. *See* 8 C.F.R. § 214.2(r)(5), (6) (2015). U.S. Citizenship and Immigration Services (USCIS) record shows that the Beneficiary was admitted to the United States as an R-1 nonimmigrant for approximately five years and three months, but that she was only outside the United States for less than one month, which was in June 2007. Accordingly, the Director denied the Petitioner's request to change the Beneficiary's nonimmigrant status and to extend her stay in the United States.²

The Beneficiary appealed the Director's adverse decision to us.³ In April 2020, we rejected the appeal, explaining: "we do not have jurisdiction to review appeals of this case type." We referenced the Director's adverse decision, which, citing 8 C.F.R. § 214.1(c)(5), specified: "There is no appeal from the denial of an application for extension of stay filed on the I-129 petition." The Director's decision

¹ The Beneficiary was previously granted R-1 nonimmigrant status pursuant to a different petition.

² The Director's decision indicates that in April 2016, USCIS approved a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) that was filed on the Beneficiary's behalf.

³ While we did not discuss this issue in our April 2020 rejection decision, the Beneficiary, not the Petitioner, had filed the appeal. The Beneficiary, however, lacked legal standing to appeal the Director's adverse decision. *See* 8 C.F.R. § 103.3(a)(1)(iii)(B).

further explained that, instead of filing an appeal with us, the Petitioner may file a motion pursuant to 8 C.F.R. § 103.5 with the Director.

In August 2020, the Beneficiary filed a Notice of Appeal or Motion (Form I-290B), which she executed on July 29, 2020 (“first motion filing”). Page 2 of the Form I-290B indicated that she was “filing a motion to reopen and motion to reconsider” and that “[her] brief and/or additional evidence is attached.” The first motion filing, however, did not address the ground upon which we rejected the appeal.

We dismissed the combined motions on multiple grounds. First, we determined that the Beneficiary failed to show that she qualified as an affected party, and as such, she did not establish legal standing to file the combined motions. *See* 8 C.F.R. § 103.3(a)(1)(iii)(B) (excluding a beneficiary from the definition of “affected party”). Second, we explained that even if we were to accept that the Petitioner, not the Beneficiary, had filed the motions, we would nonetheless dismiss them as untimely, because the combined motions were filed on August 5, 2020, over 115 days after we issued the adverse appellate decision on April 10, 2020. Finally, we dismissed the combined motions because (1) the filing did not establish that our rejection of the appeal was based on an incorrect application of law or policy, or that the decision was incorrect based on the evidence in the record at the time of the decision; and (2) the filing did not state new facts to be provided in the reopened proceeding or be supported by affidavits or other documentary evidence.

The matter is now before us on a second motion filing (“second motion filing”). The Petitioner⁴ files combined motions to reconsider and reopen the proceeding.⁵ 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). Upon review, we will dismiss the motions.

I. LAW

The regulation specifies that only an affected party has legal standing in a proceeding, stating, in pertinent part: “affected party . . . means the person or entity with legal standing in a proceeding” and “[i]t does not include the beneficiary of a visa petition.” 8 C.F.R. § 103.3(a)(1)(iii)(B). As a beneficiary does not fall under the regulatory definition of an affected party, in general, he or she may not file motions associated with a petition filed on his or her behalf.

In addition, under 8 C.F.R. § 103.5(a)(1) and 8 C.F.R. § 103.8(b), in general, motions must be filed within 33 days of the adverse decision. In response to the coronavirus (COVID-19) pandemic, however, USCIS has extended filing deadline for Forms I-290B. Specifically, a petitioner may file a Form I-290B within 60 calendar days from the date of the adverse decision, if USCIS issued the

⁴ While the Form I-290B indicates that [REDACTED] a pastor of the petitioning organization, initiated the second motion filing, the record lacks sufficient evidence confirming his affiliation with the Petitioner or his authorization to sign documents on behalf of the Petitioner. We will address this issue in the future if such need arises.

⁵ While the Petitioner indicates on page 2 of its Form I-290B that it is filing a motion to reconsider the matter, the accompanying brief from its counsel is entitled “Motion to Reopen & Motion to Reconsider.” We will therefore adjudicate the second motion filing as combined motions.

decision between March 1, 2020, and January 1, 2021.⁶ As relating to a motion to reopen the proceeding, the filing deadline may be excused if a petitioner demonstrates that the delay was reasonable and was beyond its control. 8 C.F.R. § 103.5(a)(1).

Furthermore, 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), 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.

II. ANALYSIS

On motion, the Petitioner does not address the ground upon which we rejected the appeal. As noted, we explained in our April 10, 2020, rejection of its appeal that “we do not have jurisdiction to review appeals of this case type.” We referenced the Director’s adverse decision, which, citing 8 C.F.R. § 214.1(c)(5), specified: “There is no appeal from the denial of an application for extension of stay filed on the I-129 petition.” In addition, the Petitioner’s second motion filing does not address the Beneficiary’s lack of standing to file both the initial appeal and the first motion filing. While the second motion filing discusses the untimeliness of the first motion filing, claiming that the attorney then handling the matter “was unable to submit [the motions] on time, due to lock down from the covid pandemic which all offices were closed from March 20, 2020, until late July 2021” The Petitioner, however, fails to provide any evidence to corroborate the claimed closure of one year and four months, or to demonstrate that the delay was reasonable and was beyond its control. *See* 8 C.F.R. § 103.5(a)(1).

As indicated in the Director’s decision as well as in our first motion decision, in April 2016, USCIS approved a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) that was filed on the Beneficiary’s behalf. On motion, the Petitioner indicates that the Beneficiary has submitted a Form I-485, Application to Register Permanent Residence or Adjust Status. USCIS records show that the Form I-485 application is pending. As the Petitioner acknowledges on motion, the Beneficiary’s immigration petition is separate and independent from the current nonimmigrant matter before us, and thus does not affect our adjudication of the combined motions.

III. CONCLUSION

We will dismiss the second motion filing because (1) the filing does not establish that our first motion decision was based on an incorrect application of law or policy, or that the decision was incorrect based on the evidence in the record at the time of the decision; and (2) the filing does not state new

⁶ *USCIS Extends Flexibility for Responding to Agency Requests*, available at <https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-1> (accessed on Feb. 16, 2022).

facts to be provided in the reopened proceeding or be supported by affidavits or other documentary evidence. *See* 8 C.F.R. § 103.5(a)(3); *see also* 8 C.F.R. § 103.5(a)(2).

In short, the Petitioner has not shown that we have jurisdiction over the matter that forms the bases of the appeal or motion filings. *See* 8 C.F.R. § 214.1(c)(5).

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to open is dismissed.