U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

8 13

DATE: DEC 03 2012 OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Nonimmigrant Petition for Religious Worker Pursuant to Section 101(a)(15)(R)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(i)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal from that decision. The petitioner then filed a motion to reconsider. The AAO granted the motion and reaffirmed the dismissal of the appeal. The petitioner filed a second appeal, which the AAO rejected. The matter is now before the AAO on a motion to reopen and to reconsider. The AAO will dismiss the motion.

In previous filings in this proceeding, attorney [redacted] represented the petitioner. Mr. [redacted] however, did not prepare or sign the two most recent Form I-290B Notices of Appeal; the petitioner's statements on appeal and motion include no mention of current legal representation; and the petitioner mailed the most recent motion from its own address. Form I-290B advises that attorneys "must attach a Form G-28, Notice of Entry of Appearance as Attorney or Representative" to the motion, as required by the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 292.4(a). The appeal does not include this form. Therefore, the record contains no indication that [redacted] is still the petitioner's attorney of record, and several indications that he is not. The AAO will therefore consider the petitioner to be self-represented, and the term "prior counsel" shall refer to [redacted]

The petitioner is a Christian church affiliated with the Local Churches denomination. It seeks to classify the beneficiary as a nonimmigrant religious worker under section 101(a)(15)(R)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R)(i), to perform services as a minister. The director determined that the beneficiary was statutorily ineligible for the classification sought because the law does not permit an alien to hold R-1 nonimmigrant status for longer than five years without departing the United States. The AAO incorporates its earlier decisions by reference.

Section 101(a)(15)(R) of the Act pertains to an alien who:

> (i) for the 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States; and
>
> (ii) seeks to enter the United States for a period not to exceed 5 years to perform the work described in subclause (I), (II), or (III) of paragraph (27)(C)(ii).

Section 101(a)(27)(C)(ii)(I) of the Act, 8 U.S.C. § 1101(a)(27)(C)(ii)(I), pertains to a nonimmigrant who seeks to enter the United States solely for the purpose of carrying on the vocation of a minister of that religious denomination.

Under the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 214.2(r)(6), an alien who has spent five years in the United States in R-1 nonimmigrant status may not be readmitted to or receive an extension of stay in the United States under the R visa classification unless the alien has resided abroad and has been physically present outside the United States for the immediate prior year. The regulations at 8 C.F.R. §§ 214.2(r)(1) and (5) also acknowledge this statutory five-year limit.

The petitioner filed the Form I-129 petition on June 9, 2010, admitting that the beneficiary had overstayed after his R-1 nonimmigrant status expired in March 2007. The petitioner also noted the 2008 approval of a Form I-360 immigrant petition, classifying the beneficiary as a special immigrant religious worker. The petitioner acknowledged, nevertheless, that the beneficiary's prolonged unlawful presence in the United States left him ineligible to apply for adjustment of status, and would subject him to a ten-year bar on re-entry if he left the United States to apply for a visa at an overseas consulate.

The petitioner claimed, nevertheless, that the beneficiary qualified for humanitarian relief owing to a February 27, 2010 earthquake in the beneficiary's native Chile, which left the beneficiary's home uninhabitable. A USCIS press release, "USCIS Reminds Chilean Nationals of Immigration Benefits Available," listed the types of relief available, including "[t]he grant of an application for change or extension of nonimmigrant status . . . even in cases where the request is submitted after the individual's authorized period of admission has expired." The listed provisions do not include extension of stay beyond statutory limits established by Congress. USCIS has no authority to extend those limits without express Congressional authorization. Furthermore, the "Questions and Answer[s]" section of the USCIS document indicated that the emergency benefits were available to Chilean nationals "in lawful, nonimmigrant status on March 27," 2010. The beneficiary was not in lawful nonimmigrant status on that date, his status having expired three years earlier.

The director denied the petition on August 5, 2010, because the beneficiary had already spent five years in the United States as an R-1 nonimmigrant religious worker from March 2002 to March 2007, and never left the United States after his status expired. The director concluded that the beneficiary would remain ineligible for R-1 nonimmigrant status until he spent at least one continuous year outside the United States.

The petitioner, through prior counsel, appealed the director's decision, again citing the earthquake provisions. The AAO dismissed the appeal on December 28, 2010, stating that the petitioner had not shown that the beneficiary qualified for special consideration. The AAO observed that USCIS's accommodations after the earthquake did not supersede the statutory five-year limit on R-1 nonimmigrant status.

In the first motion to reconsider, prior counsel acknowledged the AAO's findings, but maintained that USCIS "offers . . . unique immigration benefit to Chilean nationals in light of the natural catastrophe['s] humanitarian grounds." Prior counsel failed to demonstrate that the beneficiary qualifies for that relief. The AAO affirmed the prior dismissal on November 3, 2011, stating: "The materials in the record do not indicate that every Chilean national who was in the United States on February 27, 2010 automatically qualifies for an extension of stay or other prolonged residence in the United States." The AAO also stated:

> The USCIS printout quoted above did not state or imply that long-term overstays would receive special consideration, or that the earthquake would cause USCIS to overlook serious violations of status that had nothing to do with the natural disaster.

> Rather, USCIS described special provisions intended to aid nonimmigrants with a *bona fide* intention to return to Chile, whose return the earthquake delayed.

The petitioner filed an appeal on December 29, 2011, which the AAO rejected on April 9, 2012 because there is no provision to appeal an AAO decision, and because the appeal was untimely.

The petitioner has now filed a motion to reopen and to reconsider the AAO's previous decision.

A motion to reopen must state the new facts to be proved in the reopened proceeding 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 Service policy. 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. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

A motion must be accompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding and, if so, the court, nature, date, and status or result of the proceeding. 8 C.F.R. § 103.5(a)(1)(iii)(C). The motion includes no such statement, and therefore the petitioner has not properly filed the motion. This, by itself, would be grounds for dismissal of the motion under 8 C.F.R. § 103.5(a)(4). Nevertheless, the AAO will consider the merits of the motion.

On motion, [redacted] trustee of the petitioning church, stated that "the wrong box was checked" on the previous filing, which the petitioner had intended to file as a motion rather than as an appeal. The accompanying statement, however, repeatedly referred to the December 2011 filing as an "appeal." The new assertion that the petitioner merely made a mistake when filling out Form I-290B, therefore, lacks credibility.

Furthermore, the petitioner asserts that the previous filing was untimely in part because of "the rerouting of this appeal from one office to another." The petitioner attempted to file the appeal directly with the AAO, despite instructions on Form I-290B not to do so. Even taking into account the petitioner's new claim that the second appeal was supposed to be a motion, the USCIS regulation at 8 C.F.R. § 103.5(a)(1)(i) states that untimely filing of a motion to reopen "may be excused in the discretion of [USCIS] where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner." Misfiling due to failure to follow filing instructions is not beyond the control of the petitioner.

The petitioner, on motion, revisits the procedural history of various filings on the beneficiary's behalf dating back to December 2006. [redacted] asserts that the petitioner mistakenly assumed that the beneficiary derived lawful status when the petitioner filed a Form I-360 special immigrant petition on his behalf. [redacted] also states that the petitioner "has rendered great service to the

church and to the community in Chicago, and that [the members of] his family . . . have become established as good members of society and are advancing in their education."

The AAO cannot consider the merits of the underlying petition until and unless the petitioner establishes that the AAO erred by dismissing the December 2011 appeal. Here, the petitioner has made no claim of error by the AAO, or even by the director. Instead, the petitioner acknowledges its own error, and simply asks that the petitioner receive consideration on the basis of his contributions to his community.

The petitioner notes, once again, the 2008 approval of a special immigrant religious worker petition on the beneficiary's behalf. The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988). Any remedies or considerations available to the beneficiary as an applicant for adjustment of status, or as an applicant for an immigrant visa at an overseas consulate, would be administratively separate from the matter at hand, which is limited to a nonimmigrant visa petition seeking to classify the beneficiary as an R-1 nonimmigrant.

The petitioner states no new facts to be proved in the reopened proceeding, and submits no affidavits or other documentary evidence. Therefore, the motion does not meet the regulatory requirements of a motion to reopen at 8 C.F.R. § 103.5(a)(2). The petitioner has not established that the decision was incorrect based on the evidence of record at the time of the initial decision. Therefore, the motion does not qualify as a motion to reconsider under the regulation at 8 C.F.R. § 103.5(a)(3). Because the motion does not meet the applicable requirements, the regulation at 8 C.F.R. § 103.5(a)(4) requires the AAO to dismiss the motion.

The AAO reiterates, here, that the petitioner has never addressed the fundamental issue at the root of the proceeding. Federal law limits the stay of an R-1 nonimmigrant to five years, after which the alien must spend at least one year physically outside the United States before he or she is once again eligible for R-1 nonimmigrant status. The beneficiary reached the five-year mark in 2007, and he has never left the United States since that time. Under the circumstances, USCIS and the AAO cannot lawfully grant the beneficiary additional time in R-1 nonimmigrant status; there is simply no legal mechanism in existence to allow it. Approval of the present petition would literally be illegal, no matter how many motions the petitioner files. Furthermore, the filing of further motions would not grant the beneficiary lawful status while the motions are pending, nor would they otherwise prevent or delay the consequences of past violations. *See* 8 C.F.R. § 103.5(a)(1)(iv).

The motion does not meet the requirements of either a motion to reopen or a motion to reconsider, and the AAO must therefore dismiss the motion.

ORDER: The motion is dismissed.