



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **FEB 14 2013** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

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

(b)(6)

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) rejected a subsequent appeal as improperly filed. The matter is now before the AAO on a motion to reopen and a motion to reconsider. The motions will be dismissed.

The petitioner is purportedly a religious charitable organization. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a general overseer and CEO. The director determined that the petitioner had not overcome the negative findings of a compliance review site visit and had not established that it qualifies as a bona fide non-profit religious organization in the United States. The director also found that the petitioner had not established that the beneficiary is eligible for classification as a religious worker and has the requisite two years of continuous, qualifying work experience immediately preceding the filing date of the petition.

On December 29, 2011, an appeal was filed by attorney [REDACTED] seeking review of the director's decision. Accompanying the Form I-290B, Notice of Appeal, Mr. [REDACTED] submitted a Form G-28, Notice of Entry of Appearance as Attorney or Representative, which gave the beneficiary's name as the "Principal Petitioner, Applicant or Respondent." The space marked "Signature of the Petitioner, Applicant or Respondent" contained the beneficiary's signature and the handwritten words "& [REDACTED]" On July 18, 2012, the AAO faxed a letter to Mr. [REDACTED] instructing him to submit a new, fully executed Form G-28 authorizing his representation of the petitioning organization. In response, Mr. [REDACTED] submitted a new Form G-28 which again gave the beneficiary's name and included only the beneficiary's signature and the handwritten name of the petitioning organization.

After reviewing the record, the AAO determined that the appeal was improperly filed as it was not filed by the petitioner or by any party with legal standing in the proceeding, but rather by counsel for the beneficiary. The United States Citizenship and Immigration Services regulation at 8 C.F.R. § 103.3(a)(1)(iii) defines "affected party" as "the person or entity with legal standing in a proceeding" and "does not include the beneficiary." The regulation at 8 C.F.R. § 103.3(a)(2)(v) requires that "[a]n appeal filed by a person or entity not entitled to file it must be rejected as improperly filed."

The petitioner has now filed motions seeking to reopen and reconsider the appeal that was rejected as improperly filed.

Accompanying the instant Form I-290B, Notice of Motion, counsel submits a new Form G-28, signed by [REDACTED] as a director of the petitioning organization on August 14, 2012, authorizing Mr. [REDACTED] representation of the petitioner. Accordingly, the AAO can recognize Mr. [REDACTED] as the petitioner's authorized representative on motion. Counsel also submits an additional Form G-28 which does not contain the signature of an authorized official of the petitioning organization but instead contains only the handwritten name of the petitioner. In support of the instant motions, counsel additionally submits a letter from counsel, an affidavit from [REDACTED] attesting that he is a director of the petitioning organization, and copies of the previously submitted Forms G-28. On motion, counsel argues as follows, in pertinent part:

The AAO erroneously determined that the petitioner did not sign the G-28 form, but rather the beneficiary [REDACTED] signed it. In fact, the beneficiary and the petitioner signed the G-28 form, providing the attorney with standing as representing both the petitioner and the beneficiary.

The form instructions for Form G-28 state that “[t]he applicant, petitioner or respondent must **sign** the form, preferably in dark blue or black ink” (emphasis added). Part 1 of the Form G-28 states:

Pursuant to the Privacy Act of 1974 and DHS policy, I hereby consent to the disclosure to the named Attorney or Accredited Representative of any record pertaining to me that appears in any system of records of USCIS, USCBP or USICE. **Signature of Petitioner, Applicant, or Respondent**

(Emphasis in original). The regulation at 8 C.F.R. § 103.2(a)(1) provides that every benefit request must be executed and filed in accordance with form instructions which are incorporated into the regulation. Contrary to counsel’s assertion, neither the Form G-28 submitted with the appeal nor the Form G-28 submitted in response to the AAO’s fax contained the signature of an authorized official of the petitioner. As stated above, each contained only the signature of the beneficiary and the handwritten name of the petitioning organization. The AAO again finds these forms insufficient to authorize counsel’s representation of the petitioning organization on appeal.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). Based on the plain meaning of “new,” a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding.¹

A review of the evidence that the petitioner submits on motion reveals no fact that could be considered “new” under 8 C.F.R. § 103.5(a)(2). All of the evidence submitted on motion was either previously submitted or was previously available and could have been provided on appeal. The petitioner’s motion is not an opportunity for the petitioner to correct its own defects in the record. Counsel’s arguments on motion are not new facts and the evidence submitted on motion is not “new” and, therefore will not be considered a proper basis for a motion to reopen.

Motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a “heavy burden.” *INS v. Abudu*, 485 U.S. at 110. With the current motion, the petitioner has not met that burden. The motion to reopen will be dismissed.

¹ The word “new” is defined as “1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned <new evidence>” WEBSTER’S II NEW RIVERSIDE UNIVERSITY DICTIONARY 792 (1984)(emphasis in original).

In the motion to reconsider, counsel asserts that the AAO erred in rejecting the December 29, 2011 appeal and argues that the submitted Forms G-28 provided him with standing to represent the petitioner. As discussed above, the AAO disagrees with counsel's argument. 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 U.S. Citizenship and Immigration (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new or previously unavailable evidence. See *Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991).

A motion to reconsider is not a process by which a party may submit, in essence, the same brief presented on appeal and seek reconsideration by generally alleging error in the prior decision. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006). Instead, the moving party must specify the factual and legal issues raised on appeal that were decided in error or overlooked in the initial decision or must show how a change in law materially affects the prior decision. *Id.* at 60.

The motion to reconsider does not allege that the issues, as raised on appeal, involved the application of precedent to a novel situation, or that there is new precedent or a change in law that affects the AAO's prior decision. Instead, counsel makes an unsupported argument regarding the sufficiency of the submitted Forms G-28. As noted above, a motion to reconsider must include specific allegations as to how the AAO erred as a matter of fact or law in its prior decision, and it must be supported by pertinent legal authority. Because the respondent has failed to raise such allegations of error in his motion to reconsider, the AAO will dismiss the motion to reconsider.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The motions to reopen and reconsider are dismissed. The petition remains denied.