



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: **MAY 16 2013** Office: CALIFORNIA SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[Redacted]

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 immigrant visa petition. The petitioner filed a subsequent appeal. The Administrative Appeals Office (AAO) determined that the appeal was improperly filed. The AAO rejected the appeal and a subsequent motion to reopen and motion to reconsider. The matter is now again before the AAO on a motion to reconsider. The motion will be dismissed, and the petition will remain denied.

The petitioner seeks classification 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 youth pastor for [REDACTED]

The director denied the petition on May 7, 2010. On June 9, 2010, an appeal was filed by attorney [REDACTED] on behalf of [REDACTED]. After reviewing the record, the AAO determined that the appeal had been improperly filed. The AAO noted that, although Part 1 of the Form I-360 petition identified [REDACTED] as the petitioner, Part 10 of the Form I-360, "Signature," contained the signature of the alien himself, thus indicating that the alien is the petitioner. 8 C.F.R. § 103.2(a)(2). 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." Accordingly, the AAO rejected the appeal as improperly filed on February 13, 2012.

On March 13, 2012, the petitioner filed a motion to reopen and a motion to reconsider. The AAO rejected the motions, stating that as the AAO rejected the appeal without rendering a decision, there was no decision on the part of the AAO to be reopened or reconsidered. The AAO alternately noted that, even if not rejected, the motions would be dismissed as they failed to present any arguments or evidence that the AAO's rejection of the appeal for lack of standing was improper or erroneous and therefore failed to meet the requirements at 8 C.F.R. 103.5(a).

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party or the attorney or representative of record must file the motion within 30 days of service of the unfavorable decision. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.8(b). The regulation at 8 C.F.R. § 103.2(a)(7)(i) states that "[a] benefit request which is not signed and submitted with the correct fee(s) will be rejected." The date of filing is not the date of submission, but the date of actual receipt with the required fee. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the AAO issued its decision dismissing the motions on July 25, 2012. Although the petitioner initially submitted the Form I-290B, Notice of Motion, on September 13, 2012, U.S. Citizenship and Immigration Services (USCIS) rejected the form, stating that "[t]he check amount is incorrect or has not been provided." The petitioner subsequently filed the Form I-290B with the correct filing fee and it was received by the service center on October 23, 2012, 90 days after the decision was issued. Accordingly, the motion was untimely filed.

In support of the instant motion, counsel submits a brief and additional evidence. Counsel argues that the AAO was incorrect in finding that the party who filed the initial appeal lacked standing as “there were properly filed G-28s for both petitioner and beneficiary ... on file.”¹ Counsel also argues that, because the initial appeal was rejected, the petitioning alien was deprived of “a meaningful appeal and/or opportunity to present his case.” Additionally, counsel argues that the church “has ratified the original inadvertent filing,” and that the petitioner meets all eligibility requirements. These arguments and the evidence accompanying the instant motions do not address the AAO’s most recently issued decision. Rather, counsel’s arguments and the submitted evidence relate to the eligibility issues discussed in the director’s May 7, 2010 decision and to the AAO’s February 13, 2012 rejection of the church’s appeal. On motion, the AAO will only consider arguments and evidence relating to the grounds underlying the AAO’s most recent decision. The petitioner bears the burden of establishing that the AAO’s July 25, 2012 rejection and dismissal for failure to meet the requirements of a motion to reopen or reconsider was itself in error. If the petitioner can demonstrate that the AAO erred by rejecting and dismissing those motions, then there would be grounds to reconsider the proceeding. The petitioner has not done so in this proceeding. The filing of a motion does not present a new opportunity as though the dismissal of the previous motion never existed. The petitioner has not claimed or shown that its March 13, 2012 filing met the requirements of a motion to reopen or a motion to reconsider, and the AAO will not now entertain the petitioner’s untimely arguments regarding the underlying decisions to deny the petition and to reject the original appeal.

In support of the March 13, 2012 motion, the petitioner did not present arguments that the AAO was incorrect in finding that the party who filed the appeal lacked standing or that the alien petitioner was deprived of an opportunity for a meaningful appeal. Instead, counsel asserted that “the Church clearly was the petitioner of record despite the beneficiary’s inadvertent error in signing the petition.” Counsel noted that an official from the church “was signatory to all the other supporting documentation initially submitted” and the petitioner submitted a copy of the Form I-360 petition, newly signed by a church official. This argument is not persuasive. The regulation at 8 C.F.R. § 103.2(a)(2) states: “An applicant or petitioner must sign his or her application or petition.” The regulation at 8 C.F.R. § 204.5(a)(1) requires that employment-based immigrant petitions must be accepted for processing under the provisions of 8 C.F.R. § 103. The signature line on the Form I-360 provides that the petitioner is certifying “under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it [are] all true and correct.” Although a church official may have signed a letter in support of the petition and other supporting documents, these signatures did not attest to the integrity of the entire petition. Further, regarding the church’s purported “ratification” of the filing after the fact, the AAO notes that a petitioner must establish eligibility at the time of filing the petition; a petition cannot be approved at a

¹ The AAO notes that, regardless of any previously submitted G-28 authorizing Ms. [REDACTED]’s representation of the beneficiary, the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 292.4(a) as well as the instructions to the Form I-290B require that a “new [Form G-28] must be filed with an appeal filed with the Administrative Appeals Office.” This regulation applies to all appeals filed on or after March 4, 2010. *See* 75 Fed. Reg. 5225 (Feb. 2, 2010).

future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). Further, the regulations requiring a signature, cited above, provide no exception for unintentional error.

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 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 cannot be used to raise a legal argument that could have been raised earlier in the proceedings. See *Matter of Medrano*, 20 I&N Dec. 216, 220 (BIA 1990, 1991). Rather, the "additional legal arguments" that may be raised in a motion to reconsider should flow from new law or a *de novo* legal determination reached in its decision that could not have been addressed by the party. Further, 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.

As previously noted, 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. Counsel does not argue or establish in this motion to reconsider that the AAO erred in its July 25, 2012 decision based on the previous factual record, nor does counsel cite authorities which demonstrate error in the AAO's decision. Accordingly, 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 motion to reconsider is dismissed, the decision of the AAO dated July 25, 2012 is affirmed, and the petition remains denied.