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]

D13

DATE: NOV 0 7 2012 OFFICE: CALIFORNIA SERVICE CENTER [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:

[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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based nonimmigrant visa petition. The Administrative Appeals Office (AAO) rejected the appeal. The matter is now before the AAO on a motion to reopen and a motion to reconsider. The AAO will dismiss the motion.

The petitioner is a church of the 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 (pastor/missionary)." The director determined that the petitioner had not established that the beneficiary's intended position qualifies as ministerial.

Attorney signed Form I-290B, Notice of Appeal or Motion, and filed the appeal on October 14, 2011, accompanied by Form G-28, Notice of Entry of Appearance as Attorney or Representative. On that form, signed by the attorney and by the beneficiary, the attorney specified that he represented the beneficiary and was acting on the beneficiary's behalf.

The AAO rejected the appeal on April 24, 2012, citing the U.S. Citizenship and Immigration Services (USCIS) regulations at 8 C.F.R. § 103.3(a)(1)(iii), which indicates that the beneficiary is not an affected party with legal standing in the proceeding, and 8 C.F.R. § 103.3(a)(2)(v), which requires the rejection of an appeal filed by a person not entitled to file it. The AAO also stated: "[o]nly an affected party . . . may file an appeal." The regulation at 8 C.F.R. § 103.3(a)(2)(i) supports this position.

The present motion includes a new Form G-28, designating the attorney named above as the petitioner's attorney of record. This designation was not yet in effect at the time of the appellate filing.

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).

The present motion consists entirely of a brief from counsel. Counsel asserts that the beneficiary signed Form G-28 not as the beneficiary, but as "an authorized representative or official" of the church, who "co-incidentally . . . just so happened [to be] the beneficiary."

Counsel devotes much of the motion brief to contesting the director's denial of the petition. Before the AAO can address that decision, the petitioner and counsel must establish that the AAO erred in rejecting the appeal.

The USCIS regulation at 8 C.F.R. § 214.2(r)(7) requires the R-1 nonimmigrant religious worker petition to be filed by "[a]n employer in the United States." Supplementary information published with this

regulation specified that the intent behind this regulation was to prohibit alien beneficiaries from acting as their own petitioners. 73 Fed. Reg. 72276, 72277 (Nov. 26, 2008). This prohibition applies whether or not the beneficiary starts his or her own church, or holds a title of authority within the petitioning church. A March 9, 2011 cover letter in the record shows that the petitioner filed three R-1 nonimmigrant worker petitions simultaneously, including a petition on behalf of the church official who signed the Form I-129 petition and the Form G-28 newly submitted on motion. Thus, several aliens ineligible to self-petition have filed petitions for each other.

Counsel observes that the various subsections of the regulation at 8 C.F.R. § 103.3(a)(2)(v)(A)(*2*) indicate that, if an otherwise properly filed appeal lacks a fully executed Form G-28, then USCIS is to request that required form. In this instance, the appeal did not lack a fully executed Form G-28.

Counsel acknowledges that, on the Form G-28, "the box for 'Applicant' was checked instead of Petitioner." Counsel dismisses this action as a "mistake," but it remains that the beneficiary himself signed the Form G-28. Counsel's attempt to paint this action as a meaningless coincidence is not persuasive. It is significant that the beneficiary, although "an authorized official" of the petitioning church, did not previously sign the Form I-129 petition on his own behalf.

Counsel states that the appellate brief contained clear references to the church, not the alien, as the petitioner in the proceeding. The issue is not whether counsel misidentified the petitioner. Rather, the issue is which party counsel was authorized to represent at the time of the appeal. The Form G-28, as executed, designated counsel as the beneficiary's attorney, not as the petitioning church's attorney.

Counsel, on motion, identifies no new facts and provides no evidence in support thereof. Allegation of prior error by counsel is not a new fact. Therefore, the motion does not meet the regulatory requirements of a motion to reopen at 8 C.F.R. § 103.5(a)(2). Counsel states the reasons for reconsideration and alleges an incorrect application of law or USCIS policy, but does not establish that the AAO's initial appellate decision was incorrect based on the evidence of record at the time of the initial decision. At the time of the decision that counsel seeks to reopen, the Form G-28 in the record identified counsel as the beneficiary's attorney, not the petitioner's attorney. The assertion, after the fact, that counsel did not complete the form correctly does not establish that the decision was incorrect based on the evidence of record at the time of the initial decision. Therefore, the motion does not meet the regulatory requirements of a motion at 8 C.F.R. § 103.5(a)(3). As such, the regulation at 8 C.F.R. § 103.5(a)(4) requires the dismissal of the motion, both as a motion to reopen and as a motion to reconsider.

ORDER: The motion is dismissed.