



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: JAN 31 2014

OFFICE: CALIFORNIA SERVICE CENTER [Redacted]

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

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

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant 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 previous decision of the AAO will be affirmed, and the petition will remain denied.

The petitioner is a Sikh temple. It seeks to classify the beneficiary as a nonimmigrant religious worker pursuant to Section 101(a)(15)(R) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(R) to perform services as a Sikh priest. The director determined that the petitioner had not established how it intends to compensate the beneficiary.

On October 29, 2010, attorney [REDACTED] filed an appeal seeking review of the director's decision. The Form I-290B, Notice of Appeal or Motion, was not accompanied by a Form G-28, Notice of Entry of Appearance as Attorney or Representative. Instead, on the Form I-290B and in an accompanying letter, [REDACTED] stated: "A duly executed G-28 is already on file." On February 11, 2011, [REDACTED] submitted additional evidence, along with a Form G-28 signed by himself and the beneficiary, and again stated: "A duly executed G-28 is already on file." 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 state 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). Accordingly, on August 5, 2011, the AAO faxed a letter to [REDACTED] notifying him of the above regulation and instructing him to submit a new, fully executed Form G-28 authorizing his representation of the petitioning organization. The request was transmitted to the fax number listed on the Form I-290B and on counsel's letterhead, and it advised [REDACTED] to submit the properly executed Form G-28 to the AAO within 10 calendar days. No response was received.

On September 7, 2011, the AAO rejected the appeal, finding that it was improperly filed as it was not filed by the petitioner or by any party with legal standing in the proceeding. 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."

On October 5, 2011, the petitioner filed motions seeking to reopen and reconsider the appeal that was rejected as improperly filed.<sup>1</sup> On the Form I-290B and in an accompanying affidavit, counsel asserts that a properly executed Form G-28, signed by himself and the petitioner's president, [REDACTED] "was submitted with the appeal on Form I-290B on October 28, 2010." Counsel asserts that an additional Form G-28 authorizing his representation of the petitioner was submitted "on February 9, 2011 when we submitted additional evidence in support of the I-290B

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<sup>1</sup> Accompanying the instant Form I-290B is a new Form G-28 authorizing [REDACTED] representation of the petitioner. Accordingly, [REDACTED] is recognized as the petitioner's authorized representative on motion.

appeal.” Counsel states that he also submitted Forms G-28 signed by himself and the beneficiary on both October 28, 2010, and February 9, 2011. Counsel additionally states:

[I]t is mentioned in the Decision that AAO requested Form G-28 dated August 5, 2011 by fax, but I did not receive any such fax and there is no fax number mentioned in the Decision where the request was faxed.

In support of the instant motions, the petitioner submits copies of Forms G-28 signed by the petitioner’s president, dated October 28, 2010 and February 9, 2011, and copies of Forms G-28 signed by the beneficiary, dated October 28, 2010 and February 8, 2011. The petitioner additionally submits copies of documents submitted with the October 29, 2010 appeal and copies of additional documentation submitted on February 11, 2011 in support of the appeal.

The sole basis for the petitioner’s motion to reopen and motion to reconsider is counsel’s assertion that he submitted properly executed Forms G-28 with the October 29, 2010 appeal and with additional evidence submitted on February 11, 2011. The record of proceeding, however, does not corroborate counsel’s assertion. A review of the record indicates that no Form G-28 signed by the petitioner was submitted with the appeal or additional evidence. Further, in an October 28, 2010 letter submitted on appeal, [REDACTED] listed the documents being submitted “for processing the I-290 B Notice of Appeal,” including: “Form I-290B,” “Notice of Denial Decision dated October 5, 2010,” “Supporting documents,” and “Filing fees of \$ 585.00.” He did not state that a Form G-28 was included with the submission, but instead stated that “[a] duly executed G-28 is already on file.” This contradicts counsel’s assertion on motion that he submitted a Form G-28 at the time of filing the appeal. Similarly, in [REDACTED] letter of February 9, 2011, he listed additional evidence being submitted in support of the appeal and stated that a G-28 was already on file. This contradicts counsel’s assertion on motion that he submitted a Form G-28 with the filing of additional evidence. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Additionally, although counsel asserts that he did not receive the request for a new Form G-28, the record includes an automatically-generated “Transaction Report,” indicating that the fax was successfully transmitted to [REDACTED] the fax number provided on the Form I-290B, at 3:39 p.m. on August 5, 2011.

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). As discussed above, counsel’s assertions on motion are not supported by the record and contradict counsel’s previous statements on appeal. Therefore, counsel’s statements on motion are not a sufficient basis for reopening the proceeding.

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 is dismissed.

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).

Counsel has not established that the AAO's decision rejecting the appeal filed on October 29, 2010 is based on an incorrect application of law or USCIS policy. Nor has counsel established that the decision was incorrect based on the evidence of record at the time of the initial decision. The motion to reconsider is dismissed.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The motion to reopen and the motion to reconsider are dismissed, the decision of the AAO dated September 7, 2011, is affirmed, and the petition remains denied.