



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 19956353

Date: MAY 26, 2022

Motion on Administrative Appeals Office Decision

Form I-360, Petition for Special Immigrant Religious Worker

The Petitioner, a religious organization, seeks classification for the Beneficiary as a special immigrant religious worker to perform services as a minister. *See* Immigration and Nationality Act (the Act) section 203(b)(4), 8 U.S.C. § 1153(b)(4). This immigrant classification allows non-profit religious organizations, or their affiliates, to employ foreign nationals as ministers, in religious vocations, or in religious occupations in the United States.

The Director of the California Service Center initially approved the petition in March 2017. He subsequently issued a notice of intent to revoke (NOIR) to revoke the approved petition. After review of the Petitioner's response, the Director revoked the approval in November 2019. In the notice of revocation (NOR), the Director concluded that the Petitioner did not (1) submit verifiable evidence of how it intended to compensate the Beneficiary per 8 C.F.R. § 204.5(m)(10); (2) establish that the Beneficiary possessed the required two years of qualifying experience as a religious worker per 8 C.F.R. § 204.5(m)(2), (4); and (3) satisfactorily complete an on-site inspection per 8 C.F.R. § 204.5(m)(12). After review of the Petitioner's appeal of that revocation, we agreed and concluded that it was issued based on good and sufficient cause, and accordingly dismissed the appeal. The Petitioner now submits combined motions to reopen and reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. The burden of proof is on a petitioner to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369,375 (AAO 2010). Upon review, we will dismiss both motions.

I. LAW

A motion to reconsider is based on an incorrect application of law or policy to the prior decision, and a motion to reopen is based on documentary evidence of new facts. The requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3), and the requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

Motions to reopen or reconsider must be filed within 30 days of the decision, or 33 days if the decision is served by mail. 8 C.F.R. §§ 103.5(a)(1)(i), 103.8(b). USCIS may, in its discretion, excuse the untimely filing of a motion to reopen where the record demonstrates that the delay was reasonable and beyond the control of the applicant. 8 C.F.R. § 103.5(a)(1)(i). There is no comparable authority to excuse an untimely filed motion to reconsider. *See id.*

U.S. Citizenship and Immigration Services (USCIS) implemented special rules on account of the current COVID-19 pandemic under which USCIS will consider appeals and motions filed on the Form I-290B, Notice of Appeal or Motion, as timely filed if filed within 63 calendar days of an unfavorable decision issued between March 1, 2020, and October 31, 2021. USCIS Alert, "USCIS Extends Flexibility for Responding to Agency Requests," (Mar. 30, 2022), <https://www.uscis.gov/news/alerts/uscis-extends-flexibility-for-responding-to-agency-requests-3> (last visited May 26, 2022); *see also* 8 C.F.R. § 103.8(b) (adding three days to filing deadlines if USCIS serves decisions or notices by mail). USCIS later extended the Form I-290B filing deadline again from 60 days to 90 days where the underlying USCIS decision was issued between November 1, 2021, and July 25, 2022. USCIS Alert, *supra*.1.

As noted above, we previously determined on appeal that the Director's revocation of the petition was done for "good and sufficient cause" per section 205 of the Act, 8 U.S.C. § 1155, and that decision was issued on May 12, 2021. As per the COVID-19 filing flexibility rules noted above, the filing of a Form I-290B in response to a decision issued at that time is considered timely filed if received within 63 calendar days of that decision. In this case, the Petitioner attempted to file an I-290B on June 14, 2021, but it was rejected due to either an incomplete Form G-1450, Authorization for Credit Card Transaction or a denied transaction, and therefore did not retain a filing date. *See* 8 C.F.R. § 103.5(a)(1)(i) (stating that a benefit request which is rejected will not retain a filing date.) The I-290B was not filed with the proper filing fees until August 11, 2021, 91 days after our previous decision was issued. As this exceeds 63 calendar days, and USCIS regulations do not provide for discretion to excuse an untimely motion to reconsider, we will dismiss that motion.

As for the motion to reopen, the Petitioner has not demonstrated or even asserted that the delay in filing was reasonable and beyond its control. In addition, we note that even if we were to exercise our discretion to excuse the untimely filing of this motion, the new evidence submitted on motion does not overcome the deficiencies stated in the Director's revocation and our appeal, and does not show that all of the eligibility requirements for the requested classification relating to both the Petitioner and the Beneficiary were met at the time the petition was filed. Accordingly, we will also dismiss the motion to reopen.

ORDER: The motion to reconsider is dismissed.

FURTHER ORDER: The motion to reopen is dismissed