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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

A1

File: [REDACTED] Office: NEWARK FIELD OFFICE Date: APR 05 2010
SRC 08 148 52144

IN RE: Applicant: [REDACTED]

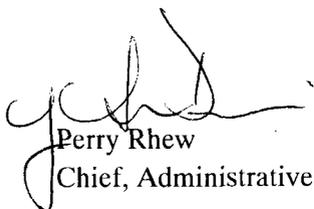
Petition: Application to Register Permanent Residence or Adjust Status (Form I-485) Pursuant
to Section 245(i) of the Immigration and Nationality Act, 8 U.S.C. § 1255(i)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been
returned to the office that originally decided your case. Any further inquiry must be made to that
office.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, New Jersey, denied the application for adjustment of status (Form I-485) and certified her decision to the Administrative Appeals Office (AAO) for review. Upon review, the AAO affirmed the field office director's decision. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed as untimely filed.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the motion within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The failure to file before this period expires may be excused at the discretion of the AAO where it is demonstrated that the delay was reasonable and beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i).

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a United States Citizenship and Immigration Services' (USCIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the motion shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The decision of the AAO was issued on October 8, 2009. The Form I-290B, Notice of Appeal or Motion, was filed on November 30, 2009, more than 53 days after the AAO decision was issued.

On motion, counsel for the applicant has not requested that the failure to file the motion within the 30-day time period be excused. The applicant does not assert that the delay in filing the motion was reasonable, and beyond the control of the applicant.

As a matter of discretion, the applicant's failure to file the motion within the period allowed will not be excused as either reasonable or beyond the control of the applicant. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). Accordingly, the motion will be dismissed as untimely filed.

ORDER: The motion is dismissed as untimely filed.