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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:

Office: DALLAS, TX

Date:

APR 05 2010

RELATES)

IN RE:

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

ON BEHALF OF APPLICANT: Self-represented

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Dallas, Texas denied the Application to Register Permanent Residence or Adjust Status (Form I-485) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as improperly and untimely filed.

The Form G-28, Notice of Entry of Appearance as Attorney or Representative, and the appellate brief are submitted by [REDACTED], who indicates that he is a licensed attorney in the State of Texas. State Bar records establish that [REDACTED] was sanctioned and is no longer eligible to practice law in the State of Texas and, accordingly, he is ineligible to represent the applicant before U.S. Citizenship and Immigration Services (USCIS).¹ All representations will be considered but the decision will be furnished only to the applicant.

On July 24, 2007, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved Petition for Alien Relative (Form I-130). On June 7, 2008, the field office director denied the Form I-485.² Pursuant to 8 C.F.R. § 245.2(a)(5), there is no appeal from the denial of an application to register permanent resident or adjust status based on relative petitions. The AAO, therefore, does not have jurisdiction over the applicant's Form I-485.

Additionally, in order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of service of the unfavorable decision (33 days if mailed). If the decision was mailed, the appeal must be filed within 33 days. See 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. See 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the field office director issued the decision on June 7, 2008. U.S. Citizenship and Immigration Services (USCIS) received the appeal on June 9, 2009, or 367 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO or the field office director authority to extend the 33-day time limit for filing an appeal. As the appeal was untimely filed, the appeal must be rejected. Nevertheless, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

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

¹ The AAO notes that, while the sanction was entered on May 27, 2009, prior to filing of the appeal, the sanction did not commence until August 1, 2009, after filing of the appeal.

² The AAO notes that the applicant subsequently filed an Application for Permission to Reapply for Admission into the United States (Form I-212), which was denied on May 4, 2009. The AAO notes that, if counsel was seeking to appeal the denial of the Form I-212, the appeal would be considered untimely filed.

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).

Here, the untimely and improperly filed appeal does not meet the requirements of a motion to reopen or a motion to reconsider because counsel does not set forth any new facts or establish that the field office director's decision was based on an incorrect application of law or policy. The AAO notes that, while counsel asserts that the applicant warrants a favorable exercise of discretion, the applicant is inadmissible pursuant to section 212(a)(9)(C) of the Act and is ineligible to apply for permission to reapply for admission because she is currently inside the United States and she has not remained outside the United States for the required ten years.³ Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

Accordingly, the AAO finds that the appeal was not properly filed, untimely filed and must be rejected.

ORDER: The appeal is rejected.

³ The applicant will be required to submit evidence establishing that she is currently outside the United States and has remained outside the United States for period of ten years when she becomes eligible to apply for permission to reapply for admission.