



U.S. Citizenship
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Services

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FILE:

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Office: LOS ANGELES

Date:

AUG 09 2007

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(i) of the
Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal is rejected as untimely filed. The appeal will be returned to the District Director to treat as a motion and enter a decision on the merits.

An affected party filing from within the United States has 30 days from the date of an adverse decision to file an appeal. An appeal received after the 30-day period has tolled will not be accepted. The 30-day period for submitting an appeal begins 3 days after the Notice of Decision is mailed. 8 C.F.R. § 103.5a(b).

The record reflects that the District Director sent the decision on August 31, 2005 to the applicant at her address of record. The applicant filed the appeal with the correct fee on October 6, 2005, 36 days after the decision was issued. Therefore, the appeal was untimely filed and must be rejected.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) provides that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. § 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3), 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: (1) 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; and (2) 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).

The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the District Director of the Los Angeles, California District Office. *See* 8 C.F.R. § 103.5(a)(1)(ii). The District Director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

Upon review, counsel has submitted sufficient new evidence to meet the requirements for a motion to reopen. Counsel has also asserted that the District Director's decision was based on an incorrect application of law or policy and has cited precedent decisions or law in support of this assertion. Accordingly, the applicant's appeal meets the requirements for a motion to reconsider.

Therefore, the matter will be returned to the District Director to treat the appeal as a motion. The District Director shall review all the evidence of record, including the evidence submitted on appeal. The District Director may request any additional evidence deemed necessary to assist with the determination. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The appeal is rejected as untimely filed and returned to the District Director to treat as a motion and enter a decision on the merits.