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OCT 02 2007

FILE: [REDACTED] Office: CIUDAD JUAREZ, MX Date:  
(CDJ 2004 855 095)

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility.

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Officer in Charge, Ciudad Juarez, Mexico. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed. The matter will be returned to the officer in charge for consideration as a motion to reopen.

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. If the decision was mailed, the appeal must be filed within 33 days. 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. 8 C.F.R. § 103.2(a)(7)(i).

The record reflects that the officer in charge issued the applicant's decision on December 2, 2005. It is noted that the officer in charge properly gave notice to the applicant that he had 33 days to file the appeal. The record indicates that the appeal was received on January 23, 2006, 52 days after the denial decision was issued. Accordingly, the appeal was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. 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 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).

In the present matter, the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601 application) was denied because the applicant failed to establish that a qualifying family member would suffer extreme hardship if he were denied admission into the United States. The applicant's untimely appeal contains a letter addressing previously claimed, and new financial and emotional hardship that the applicant's wife and children would suffer if his Form I-601 application is denied. The untimely appeal additionally contains new evidence including birth certificates, medical records and copies of the applicant's previous paychecks. The AAO finds that the untimely appeal thus meets the requirements of a motion to reopen. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the officer in charge, Ciudad Juarez, Mexico. 8 C.F.R. § 103.5(a)(1)(ii). Therefore, the officer in charge must consider the untimely appeal as a motion to reopen and render a new decision accordingly.

**ORDER:** The appeal is rejected. The matter is returned to the officer in charge for consideration as a motion to reopen.