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U.S. Department of Homeland Security
20 Mass Ave., N.W. Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

Office: MIAMI, FL

Date: OCT 29 2007

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality 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.

A handwritten signature in black ink, appearing to read "Robert P. Wienmann".

Robert P. Wienmann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Miami, Florida denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

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 after 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 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 district director issued the decision on February 9, 2005. Counsel states that the decision issued by the district director was postmarked on June 13, 2005 and was not received by his office until June 15, 2005. *Counsel's Letter*, dated July 8, 2005. He references an attached envelope to establish the date the decision was postmarked, however, the record does not include this envelope. The applicant's appeal was received by the district director on July 11, 2005, or 152 days after the decision was issued. As the assertions of counsel regarding the mailing of the decision are not supported by the record, the AAO finds the appeal to have been untimely filed.

Neither the Immigration and Nationality 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).

On appeal, counsel states that the director's decision is against the weight of the evidence and therefore should be remanded or overturned. He states that the applicant and his spouse are and remain married and have provided sufficient evidence of extreme hardship. *Counsel's Letter*, dated July 8, 2005.

Here, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.