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**U.S. Citizenship
and Immigration
Services**

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FILE

Office: PHILADELPHIA, PA

Date: **OCT 31 2007**

IN RE: Applicant:



APPLICATION: Application for Waiver of Ground of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



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. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Philadelphia, Pennsylvania, denied the Form I-601, 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). 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. The appeal must be submitted to the correct office, and must be accompanied by the required filing fee. 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 director issued the decision on March 21, 2005. It is noted that the director properly gave notice to the applicant that he had 33 days to file the appeal. It is further noted that the director informed the applicant that the filing fee for the appeal was \$195. The notice to the applicant advised that failure to properly file the appeal would result in the district director's decision becoming final.

A letter accompanying the applicant's appeal, dated April 20, 2005, was accompanied by a check payable to USDOJ in the amount of \$110. On May 11, 2005, the director rejected the applicant's appeal, noting that the check or money order must be made payable to USCIS or DHS. The appeal, with the appropriate fee, was not received by the director until May 25, 2005, 66 days after the date of issuance of the decision. 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. 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 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).

The applicant indicates on the Form I-290B, Notice of Appeal, that additional evidence or a brief would be submitted within 30 days. Neither the director, nor this office, has received additional evidence or a brief from the applicant. The untimely appeal does not meet the requirements of a motion to reopen or reconsider, and thus there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

ORDER: The appeal is rejected.