



U.S. Citizenship
and Immigration
Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

[REDACTED]

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FILE:

[REDACTED]

Office: ACCRA, GHANA

Date:

SEP 18 2007

IN RE:

Applicant:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility.

ON BEHALF OF APPLICANT:

[REDACTED]

[Faint handwritten signature]

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Officer in Charge, Accra, Ghana. The matter is now before the 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 and reconsider.

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 denial decision on June 8, 2005. The officer in charge properly gave notice to the applicant that he had 30 (33) days to file an appeal. The record indicates that the applicant's appeal was received on August 10, 2005 – 63 days after the officer in charge's decision was issued. It is noted that counsel for the applicant asserts the present appeal is timely because, although the decision is dated June 8, 2005, the decision was not mailed to the applicant, and was instead personally handed to him on July 14, 2005. The applicant provided no evidence to corroborate these claims, however, and the record contains no evidence to indicate that the decision was served on the applicant on July 14, 2005. Accordingly, the appeal will be deemed to be 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 applicant's untimely appeal contains court documents and a letter written by his attorney asserting that the court documents demonstrate that charges against the applicant were dismissed, and that he has no criminal record. The letter additionally asserts that the applicant's wife is suffering extreme hardship and the untimely appeal contains new medical and public assistance evidence. The AAO finds that the untimely appeal thus meets the requirements of a motion to reopen and reconsider. 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. 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 reconsider 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 and reconsider.