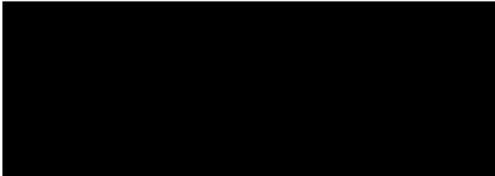


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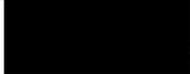
U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE:



Office: NEW DEHLI, INDIA

Date:

SEP 18 2007

IN RE:

Applicant:



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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Officer in Charge, New Delhi, India. The matter is now before the 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. 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 a decision on September 15, 2005. The officer in charge properly gave notice to the applicant that she had 30 (33) days to file an appeal. The record indicates that the applicant attempted to file an appeal on November 26, 2005 – 293 days after the officer in charge's decision. The appeal was rejected on November 30, 2005, due to the applicant's failure to sign the Form I-290B appeal, and due to payment problems. The Form I-290B appeal was filed with proper payment at the New Delhi office on June 1, 2006 – 259 days after the officer in charge's decision was issued. Accordingly, the appeal was untimely filed. The officer in charge erroneously treated the appeal as timely and forwarded the matter to the AAO.

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 her husband would suffer extreme hardship if she were denied admission into the United States. The applicant's untimely appeal contains medical records for the applicant, and a letter written by the applicant's husband, addressing the emotional and medical hardship that the applicant will suffer if her Form I-601 application is denied. The letter does not state or corroborate new facts to be proved regarding hardship that the applicant's husband would suffer if the applicant's Form I-601 application were denied. The AAO finds that the untimely appeal thus does not meet the requirements of a motion to reopen. Accordingly, 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 and does not qualify as a motion, the appeal must be rejected.

ORDER: The appeal is rejected.