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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE:



Office: MIAMI, FL

Date:

SEP 24 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:



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 District Director, Miami, Florida denied the waiver application. The matter was appealed to the Administrative Appeals Office (AAO) and was dismissed. The matter is now before the AAO on a motion to reopen. The motion will be rejected as untimely filed.

In order to properly file a motion to re-open, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the complete motion within 30 days after service of the unfavorable decision. 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 AAO issued the decision on January 14, 2002. It is noted that the AAO properly gave notice to the petitioner that he had 30 days to file the motion. Although counsel dated the motion February 13, 2002, it was received by the district director on April 11, 2003, or 452 days after the decision was issued. Accordingly, the motion was untimely filed.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states that, failure to file a motion to reopen within the 30 day period may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant. The record does not demonstrate any reason for the delay. Thus, the late filing cannot be excused.

As the motion to reopen was untimely filed, the motion must be rejected.

ORDER: The motion is rejected.