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U.S. Citizenship
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OCT 03 2007

FILE:



Office: CIUDAD JUAREZ, MEXICO

Date:

IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v)
of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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 waiver application was denied by the Officer-in-Charge (OIC), Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed. The AAO will return the matter to the OIC for consideration as a motion to reconsider.

The AAO notes that the record includes a Form G-28, Notice of Entry of Appearance as Attorney or Representative. However, the individual identified by the Form G-28 is not identified as an attorney and is not an accredited representative of an organization recognized and accredited by the Board of Immigration Appeals, as defined in 8 C.F.R. §§ 103.2 and 292.1(a)(4). Accordingly, the AAO will consider the applicant to be self-represented, but will accept all evidence submitted for the record.

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. *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 OIC issued the decision on August 24, 2006. It is noted that the OIC properly gave notice to the applicant that she had 33 days to file the appeal. Although the appeal is dated September 15, 2006, the appeal was received by the OIC on September 29, 2006, which is 36 days after the decision was issued. Accordingly, the appeal was untimely filed. The OIC erroneously annotated the appeal as timely and forwarded the matter to the AAO.

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).

Here, the untimely appeal meets the requirements of a motion to reconsider. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the OIC. *See* 8 C.F.R. § 103.5(a)(1)(ii). Therefore, the OIC must consider the untimely appeal as a motion to reconsider and render a new decision accordingly.

ORDER: The appeal is rejected. The matter is returned to the OIC for consideration as a motion to reconsider.