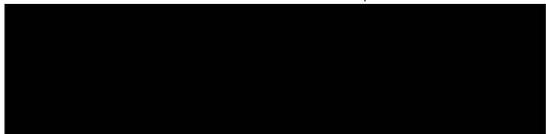


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U.S. Citizenship
and Immigration
Services

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HA

FILE: [REDACTED]

Office: PHOENIX, AZ

Date: **NOV 17 2006**

IN RE: [REDACTED]

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

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.

Robert P. Wiemann

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, AZ. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is now before the Administrative Appeals Office (AAO) on a motion. The motion will be dismissed the previous decisions affirmed and the application denied.

The motion was filed untimely. The regulation at 8 C.F.R. 103.5(a)(1)(i), states that a motion must be filed within 30 days of the decision that the motion seeks to reopen or reconsider. The regulation at 8 C.F.R. § 103.a(b) states that whenever a person is required to act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Here, the AAO mailed its decision to the petitioner on October 22, 2004. The motion was filed with the District Office on February 4, 2005.

The applicant asserts that the motion is a motion to reopen. According to the regulation at 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. Applicant does not state any new facts and the motion is not supported by documentary evidence. **Thus, the motion is not a proper motion to reopen.** According to the regulation at 8 C.F.R. § 103.5(a)(3), 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 Citizenship and Immigration Services (CIS) policy. The instant motion asserts that the AAO's previous decision incorrectly applied the law. Thus, it is closer to a motion to reconsider. The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that a late motion may be excused in the discretion of CIS where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. The applicant makes no attempt to explain why the motion was filed untimely.

In light of the above, the motion is untimely filed.

ORDER: The motion is dismissed and the application denied.