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U.S. Citizenship
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: OCT 10 2006

IN RE:

Applicant:



APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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, Chief
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (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 after 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 record indicates that the Director issued the decision on October 19, 2005. It is noted that the Director properly gave notice to the applicant that she had 33 days to file the appeal. The applicant filed a Notice of Appeal to the AAO (Form I-290B), which was received by the California Service Center on November 17, 2005, with a filing fee of \$110.00. It was rejected and returned to the applicant because it did not have the proper filing fee. As of September 28, 2005, the filing fee for a Form I-290B was increased to \$385.00.

The regulation at 8 C.F.R. § 103.2(a) states in pertinent part:

(7) Receipt date- (i) General. An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204 or part 245 or part 245a of this chapter, shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable will not retain a filing date . . .

The Form I-290B was resubmitted to the California Service Center with the proper filing fee and received by the California Service Center on December 28, 2005, 70 days after the decision was issued.

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. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Director, California Service Center. *See 8 C.F.R. § 103.5(a)(1)(ii).* The Director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.