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U.S. Citizenship
and Immigration
Services

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[Redacted]

H4

FILE:

[Redacted]

Office: PHOENIX, AZ

Date:

AUG 29 2007

IN RE:

Applicant:

[Redacted]

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:

[Redacted]

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 waiver application was denied by the District Director, Phoenix, Arizona, 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 district director issued the decision on June 23, 2006. The decision indicates that the appeal must not be sent directly to the AAO; but must be filed with the Phoenix, Arizona, office. It is noted that the district director properly gave notice to the petitioner that it had 33 days to file the appeal. Despite this notice, the applicant initially filed the appeal with the AAO. The record reflects that the appeal was properly received by the Phoenix, Arizona, District Office, Citizenship and Immigration Services (CIS) on August 2, 2006, or 40 days after the decision was issued. Accordingly, the appeal was untimely filed.

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.

An untimely-filed appeal must meet specific requirements to be treated as a motion. The regulation at 8 C.F.R. § 103.5(a)(2) requires that a motion to reopen must state the new facts to be provided in the reopened proceeding, supported by affidavits or other documentary evidence. Furthermore, 8 C.F.R. § 103.5(a)(3) requires that 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 CIS policy.

Review of the record indicates that the appeal does not meet either of these requirements. The legal arguments and facts that counsel sets forth on appeal are the same as those previously made by counsel in support of the waiver application. The petitioner does not provide any new facts to be considered in the reopened proceeding, nor does the petitioner provide new documentary evidence. Furthermore, the petitioner neither states a clear reason for reconsideration nor provides any precedent decision to establish that the decision was based on an incorrect application of law or CIS policy. For these reasons, the appeal will not be treated as a motion to reopen or reconsider.

As the appeal was untimely filed and the petitioner has failed to provide any new facts or evidence that support a motion to reopen, the appeal must be rejected.

ORDER: The appeal is rejected as untimely filed.