

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

H4

PUBLIC COPY



FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 05 2007

IN RE: Applicant: [REDACTED]

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 January 20, 2006. It is noted that the Director properly gave notice to the applicant that he had 33 days to file the appeal. The Notice of Appeal to the AAO (Form I-290B) was received by the California Service Center on February 23, 2006, with a filing fee of \$110.00. It was rejected and returned to the applicant because as of September 28, 2005, the filing fee for a Form I-290B was increased to \$385.00. The Form I-290B was resubmitted to the California Service Center with the proper filing fee and received by the California Service Center on March 9, 2006.

The AAO notes that on the Notice of Decision the Director informed the applicant that the filing fee for a Form I-290B was \$110.00. Therefore, the applicant cannot be held accountable for submitting the incorrect fee.

Although the applicant cannot be held accountable for submitting the incorrect fee, the fact remains that the Form I-290B was originally received by the California Service Center on February 23, 2006, 34 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. 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.