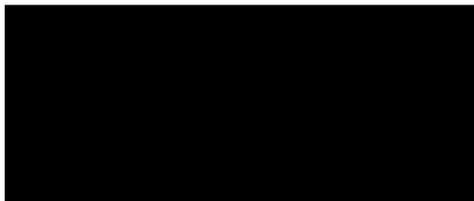


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U.S. Citizenship
and Immigration
Services

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FILE:



Office: MANILA, PHILIPPINES

Date: OCT 09 2007

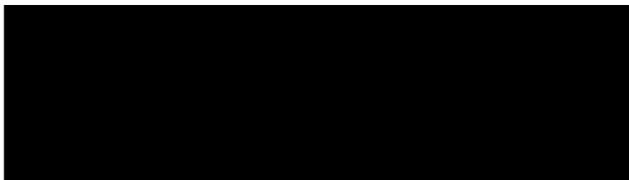
IN RE:

Applicant:



APPLICATION: Application for Permission to Reapply for Admission into the U.S. after Removal or
Deportation.

ON BEHALF OF APPLICANT:



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 was denied by the Officer in Charge, Manila, Philippines. The matter 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 of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. 8 C.F.R. § 103.2(a)(7)(i).

The officer in charge issued the applicant's decision on March 22, 2006. It is noted that the officer in charge properly gave notice to the applicant that he had 33 days to file the appeal. The record reflects that the appeal was sent to the AAO in error. An appeal is not properly filed until the office with proper jurisdiction receives it. The appeal was received by the U.S. Citizenship and Immigration Services (CIS) office in Manila, Philippines, on June 9, 2006, 79 days after the denial decision was issued. Accordingly, the appeal was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. 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).

In the present matter, the Form I-212, Application for Permission to Reapply for Admission into the U.S. after Removal or Deportation, was denied as a matter of discretion. The officer in charge found that no purpose would be served by approving the application since, as a lawful permanent resident subsequently convicted of an aggravated of an aggravated felony, the applicant was statutorily ineligible for a waiver of inadmissibility. The untimely appeal contains no legal statements or evidence addressing the basis of the denial. The untimely appeal therefore does not meet the requirements of a motion to reopen or a motion to reconsider, and there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

As the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

ORDER: The appeal is rejected.