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U.S. Citizenship
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Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: DEC 17 2008

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IN RE:

Applicant:



PETITION: Application for Travel Document Pursuant to Section 223 of the Immigration and Nationality Act, 8 U.S.C. § 1203

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The applicant is a native and citizen of Mexico who seeks to obtain a travel document (reentry permit) under section 223 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1203. The director denied the application after determining that the applicant is not a lawful permanent resident of the United States.

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. *See* 8 C.F.R. § 103.5a(b). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a U.S. Citizenship and Immigration Services (USCIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the director issued the decision on May 22, 2006. The Form I-290B indicates that it was stamped as received by USCIS on October 16, 2006, or 147 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 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 USCIS policy.

Review of the record indicates that the appeal does not meet the requirements of a motion. The applicant has not provided new facts and has not established that the director's decision was based upon an erroneous conclusion of law. The applicant states on appeal that it would be an emotional and financial hardship to relocate his family outside of the United States.

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

ORDER: The appeal is rejected as untimely filed. The application is denied.