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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

LIN 06 272 50959

Office: NEBRASKA SERVICE CENTER

Date: DEC 17 2008

IN RE:

Applicant:



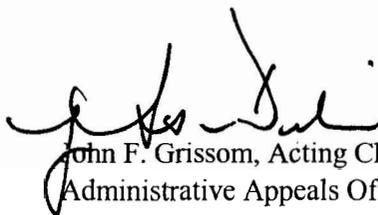
PETITION: Application for Travel Document Pursuant to Section 223 of the Immigration and Nationality Act, 8 U.S.C. § 1203.

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.


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 Afghanistan 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 stating that it was not in the best interest of USCIS to issue a travel document to the applicant at this time.

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 June 2, 2008. The Form I-290B indicates that it was stamped as received by USCIS on July 7, 2008, or 35 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.

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.