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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: ATHENS, GREECE Date: JUN 29 2004

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, Director
Administrative Appeals Office

DISCUSSION: The application for Permission to Reapply for Admission into the United States after Deportation or Removal (I-212 application) was denied by the Officer in Charge, Athens, Greece. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed and the previous decision of the AAO will be affirmed.

The applicant is a native and citizen of Egypt who initially entered the United States (U.S.) in 1995 with a fraudulent Dutch passport. The applicant was present in the U.S. without a lawful admission or parole between 1995 and December 1998. He departed the U.S. in early 1999, and attempted to re-enter the U.S. using a fraudulent Dutch passport on March 1, 1999. The applicant was denied admission, and was ordered removed and advised that he was ineligible to re-enter the U.S. for five years. In May 1999, the applicant obtained a B2 visitor visa in Sri Lanka, in violation of his re-entry bar. He subsequently used the B2 visa to obtain entry into the United States, and the applicant married a U.S. citizen on August 9, 1999. On February 16, 2001, the applicant was ordered removed from the U.S. for a period of twenty years, for having reentered the U.S. illegally. The applicant presently seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

The officer in charge (OIC) concluded that the unfavorable factors outweighed the favorable factors in the applicant's case. The applicant's I-212 application was denied accordingly. The AAO affirmed the OIC's decision on appeal. The applicant filed a motion to reopen and reconsider on January 14, 2004.

An applicant has thirty days from the date of an adverse decision, to file a motion to reopen or a motion to reconsider the decision. A motion that does not meet applicable requirements shall be dismissed. *See* 8 C.F.R. §103.5. The AAO notes that in the present case, the AAO decision is dated October 7, 2003. The AAO decision clearly stated in its instructions:

> If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider . . . . Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. §103.5(a)(1)(i).
>
> If you have new or additional information that you wish to have considered, you may file a motion to reopen . . . . Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant.

The record reflects that the applicant's motion to reopen and reconsider was filed on January 14, 2004, more than three months after an AAO decision was rendered in his case. The motion to reopen and reconsider is therefore untimely pursuant to 8 C.F.R. § 103.5.

Under 8 C.F.R. § 103.5(a)(1)(i), the untimely filing of a motion to reopen may be excused in the discretion of Citizenship and Immigration Services (CIS), where it is demonstrated that the delay was reasonable and was beyond the control of the applicant. The applicant stated in a November 15, 2003, letter to CIS that his motion was late because he did not receive his October 7, 2003, AAO decision until October 22, 2003. To substantiate his statement, the applicant provides a copy of the AAO envelope with a postmark that appears to state October 15, 2003. The AAO notes that the remaining postmarks contained on the envelope are illegible.

The applicant provides no other evidence or explanation regarding the untimely filing of his motion.

The AAO finds the applicant failed to establish that the delay in filing his motion was reasonable and beyond his control. The AAO notes that the applicant received the AAO decision more than two weeks prior to his required thirty-day filing date for a motion to reopen. The applicant failed to address why he was unable to file his motion within the time frame set forth in the AAO decision. The applicant additionally failed to establish that it was beyond his control and reasonable for him to wait over three months before filing his motion.

Because the applicant failed to establish that his motion to reopen and reconsider was timely filed, or that it was reasonable and beyond his control to file the motion late, the motion will be dismissed pursuant to 8 C.F.R. § 103.5(a).

ORDER: The motion is dismissed.