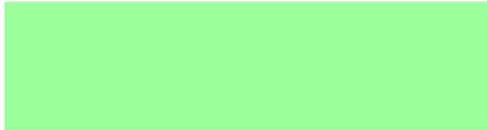


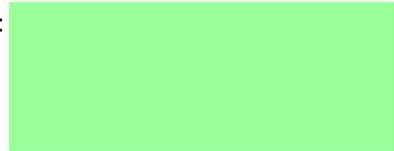


U.S. Citizenship  
and Immigration  
Services

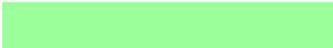
(b)(6)



Date: Office: NEBRASKA SERVICE CENTER FILE:

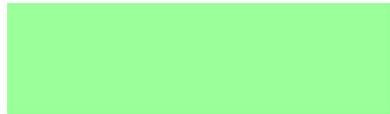


**SEP 04 2013**

IN RE: Applicant: 

Application: Application to Register Permanent Residence or Adjust Status (Form I-485) Pursuant to Section 245 of the Immigration and Nationality Act, 8 U.S.C. § 1255

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

for Ron M. Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The application and subsequent motion to reopen and reconsider were denied by the Director, Nebraska Service Center. A subsequent appeal before the Administrative Appeals Office (AAO) was dismissed. The matter is now before the AAO on a motion to reopen and reconsider its decision. The motion will be granted and the AAO's previous decision will be affirmed. The matter will remain rejected.

The record reflects that the applicant is a native and citizen of South Africa, who filed an Application to Register Permanent Residence or Adjust Status (Form I-485). The director denied the application on June 27, 2012. The applicant filed a motion to reopen and reconsider, which was denied on October 2, 2012. On November 7, 2012, the applicant submitted a Notice of Appeal or Motion (Form I-290B), indicating at Part 2 that he is filing an appeal of the Form I-485.

On June 5, 2013, the AAO conducted appellate review on a *de novo* basis and rejected the appeal on two grounds.<sup>1</sup> First, the AAO determined that the appeal was untimely filed. The evidence of record showed that the director issued the decision denying the motion to reopen and reconsider the Form I-485 on October 2, 2012. The Form I-290B, appealing the director's decision was received on November 7, 2013, thirty-seven (37) days after the decision was issued. Second, the AAO also rejected the appeal because it does not have appellate jurisdiction over an appeal from the denial of an application for adjustment of status under section 245(a) of the Act. 8 C.F.R. § 245.2(a)(5)(ii).

On motion, counsel asserts that he was unaware that the Form I-290B should be mailed to the Phoenix Lock Box and that he incorrectly mailed the form to the Nebraska Service Center, which forwarded the appeal to the Phoenix Lock Box on November 7, 2012. Counsel submitted a FedEx tracking sheet indicating that the appeal was delivered to Nebraska Service Center on November 5, 2012, thirty-five (35) days after the decision was issued.

A motion to reopen must state the new facts to be proved at 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 reason 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 ... [and] 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).

On motion, counsel asserts that the Form I-290B was received by the Nebraska Service Center on November 5, 2012. He submitted new evidence indicating that the form was delivered at the Nebraska Service Center on November 5, 2012. Counsel contends that the filing date should be November 5, 2012 and not November 7, 2012. Based on the evidence on motion, the Form I-290B was untimely filed and must be rejected. Based on counsel's assertion on motion and the evidence

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<sup>1</sup> The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

of record, the appeal was first received thirty-five (35) days after the decision was issued. Therefore, the appeal is untimely and must be rejected.<sup>2</sup>

Secondly, the AAO does not have appellate jurisdiction over an appeal from the denial of an application for adjustment of status under section 245(a) of the Act. 8 C.F.R. § 245.2(a)(5)(ii). The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security pursuant to the authority vested in her through the Homeland Security Act of 2002, Pub. L 107-296. *See* DHS Delegation Number 0150.1 (effective March 1, 2003).

The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003), with one exception - petitions for approval of schools and the appeals of denials of such petitions are now the responsibility of Immigration and Customs Enforcement.

The AAO has jurisdiction to review denials of applications for adjustment of status filed by aliens seeking the bona fide marriage exemption and aliens in U or T nonimmigrant status. Section 245(e), (l) and (m) of the Act, 8 U.S.C. § 1255(e), (l), (m); 8 C.F.R. §§ 245.1(c)(8)(viii), 245.23(i), 245.24(f)(2). The applicant's case does not fall within the AAO's jurisdiction. For this reason also, the appeal must be rejected.

**ORDER:** The motion is granted. The previous decision of the AAO dated June 5, 2013 is affirmed.

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<sup>2</sup> In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party or the attorney or representative of record 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. § 103.8(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).