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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: WASHINGTON DISTRICT Date: **APR 24 2008**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Status as Permanent Resident Pursuant to Section 13 of the Act of September 11, 1957, 8 U.S.C. § 1255b.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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 "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Washington, D.C. and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that an affected party must file a complete appeal within 30 days after service of an unfavorable decision. If the decision is mailed, the 30-day period for submitting an appeal begins 3 days after it is mailed. 8 C.F.R. § 103.5a(b). The date of filing is the date of actual receipt of the appeal, not the date of mailing. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record reflects that the district director sent decisions to the applicant and his dependants on February 4, 2002 to the applicant at the applicant's address of record. It is noted that the district director stated that the applicant had 33 days to file an appeal and that the appeal should be filed to that office. The appeal (the applicant appealed only the decision denying his own application) was filed directly with the AAO on March 27, 2002, 51 days after the decision was issued. The appeal was received by the Washington District Office no sooner than April 12, 2002, 67 days after the decision was issued. Therefore, the appeal was untimely filed and must be rejected.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the time limit for filing an appeal. However, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) provides that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. § 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3), 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: (1) 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; and (2) 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).

The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the district director of the Washington, D.C. District Office. *See* 8 C.F.R. § 103.5(a)(1)(ii). The district director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

Here, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. On appeal, counsel¹ has asserted that the decision was incorrect, but has failed to demonstrate that the decision was incorrect based on the evidence of record at the time of the initial decision and has not cited to any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. Furthermore, the appeal does not state new facts to be proved and no additional evidence has

¹ On a signed Form G-28, Tahir R. Awan enters an appearance on the applicant's behalf as an "authorized representative." [REDACTED] does not indicate that he is an attorney, and other documents in the record show that [REDACTED] is a "consultant" to attorney James O. Roberson. It is noted that [REDACTED] has not been accredited as a representative by the Executive Office of Immigration Review and there is no other evidence demonstrating that [REDACTED] is authorized to represent the applicant in these proceedings. All representations have been considered, but the decision will be issued to the applicant only.

been submitted. Therefore, 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.