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**U.S. Citizenship
and Immigration
Services**

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invasion of personal privacy

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[REDACTED]

FILE: [REDACTED] Office: WASHINGTON DISTRICT Date: **FEB 23 2009**

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:

[REDACTED]

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 "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Washington, D.C. and appealed to the Administrative Appeals Office (AAO). The appeal was dismissed. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be rejected as untimely filed.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the motion within 30 days of service of the unfavorable decision. The failure to file before this period expires may be excused at the discretion of the AAO where it is demonstrated that the delay was reasonable and beyond the control of the applicant. 8 C.F.R. § 103.5(a)(1)(i).

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a United States 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 motion shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The last decision of the AAO was issued on August 20, 2008. The motion, including a brief, the applicant's statement, and country condition information was filed on September 23, 2008, or 34 days after the AAO decision was issued. Counsel for the applicant also provided additional information, date stamped as received in the district office on December 1, 2008.¹

On motion, the petitioner has not requested that the failure to file the motion within the 30-day time period be excused. The petitioner does not assert that the delay in filing the motion was reasonable, and beyond the control of the applicant.

As a matter of discretion, the applicant's failure to file the motion within the period allowed will not be excused as either reasonable or beyond the control of the applicant. Accordingly, the motion will be rejected as untimely filed.

ORDER: The motion is rejected as untimely filed.

¹ Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. See 8 C.F.R. §§ 103.5(a)(2) and (3).