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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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

\*3.



DATE: FEB 09 2012

Office: WASHINGTON DISTRICT OFFICE

File: 

IN RE:

Applicant: 

PETITION: 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 PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. 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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Washington, D.C. and 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 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. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). A failure to timely file a motion to reopen 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. A failure to timely file a motion to reconsider may not be excused. 8 C.F.R. § 103.5(a)(1)(i). A motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The decision of the AAO was issued on April 20, 2010. The AAO properly informed the applicant that any motion must be submitted to the office that originally decided his case by filing a Form I-290B, Notice of Appeal or Motion, with the correct fee and that any motion must be filed within 30 days of the decision that the motion sought to reopen and reconsider, as required by 8 C.F.R. 103.5(a)(1)(i). The Form I-290B, Notice of Appeal or Motion, was not properly filed until June 3, 2010, or forty-four days after the AAO decision was issued.

The petitioner does not assert and the record does not show that the failure to timely file the motion to reopen is a reasonable delay beyond the control of the applicant. 8 C.F.R. § 103.5(a)(1)(i). As a matter of discretion, the applicant's failure to file the motion to reopen within the period allowed will not be excused as either reasonable or beyond the control of the applicant. Accordingly, the motion to reopen and the motion to reconsider will be dismissed as untimely filed.

**ORDER:** The motion is dismissed. The AAO's previous April 20, 2010 decision is affirmed. The application remains denied.