

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

Handwritten initials and signature

OCT 30 2007

[Redacted]

FILE:

PTP 2004 624 008

Office: PORT-AU-PRINCE, HAITI

Date:

IN RE:

Applicant:

[Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility.

ON BEHALF OF APPLICANT:

[Redacted]

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.

Handwritten signature of Robert P. Wiemann

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Officer in Charge, Port-au-Prince, Haiti. The matter is now before the AAO on appeal. The appeal will be rejected as untimely filed. The matter will be returned to the officer in charge for consideration as a motion to reopen and issuance of a new decision.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party 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. 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. 8 C.F.R. § 103.2(a)(7)(i).

The record reflects that the officer in charge issued the denial decision on April 24, 2007. The officer in charge properly gave notice to the applicant that he had 30 (33) days to file an appeal. The applicant's appeal was received on June 25, 2007 – 62 days after the officer in charge's decision was issued. Counsel for the applicant asserts that the present appeal is timely because, although the denial decision is dated April 24, 2007, the decision was not mailed to the applicant, and was instead personally handed to him on May 25, 2007. Counsel refers to a corresponding Form I-94 that was given to the applicant on May 25, 2007. The AAO notes that the record does not contain a copy of the corresponding Form I-94. The AAO notes further that the issuance of a Form I-94 on May 25, 2007, would not, in and of itself, constitute proof of receipt of the applicant's denial letter on that date. The record contains no other evidence to corroborate the May 25, 2007, date of service claims made by counsel. Accordingly, the appeal will be deemed untimely filed.

Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, 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 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 Service policy. A motion to reconsider a decision on an application or petition 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).

In the present matter, the applicant's untimely appeal contains a brief written by his attorney asserting hardship to the applicant's wife. The untimely appeal additionally contains a new hardship letter from the applicant's wife and a good character letter for the applicant. The untimely appeal thus meets the requirements for consideration as a motion to reopen. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the officer in charge. 8 C.F.R. § 103.5(a)(1)(ii). Therefore, the officer in charge must consider the untimely appeal as a motion to reopen and render a new decision accordingly.

ORDER: The appeal is rejected. The matter is returned to the officer in charge for treatment as a motion and issuance of a new decision.