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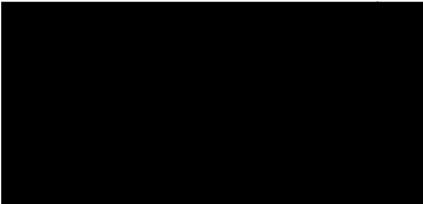
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FILE: [Redacted] Office: PANAMA Date: **SEP 18 2007**
(GYQ20 057 38014)

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility.

ON BEHALF OF APPLICANT:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Panama. The matter is now before the AAO on appeal. The appeal will be rejected as untimely filed. The matter will be returned to the director for consideration as a motion to reopen.

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 director issued the denial decision on September 21, 2006. The applicant's appeal was received by the director on November 1, 2006 – 41 days after the denial decision was issued. Accordingly, the appeal was untimely filed. It is noted that the director properly gave notice to the applicant that he had 33 days to file the appeal. The director erroneously added, however, that for overseas mailing purposes the applicant was allowed an additional 15 days to file the appeal. The appeal was subsequently erroneously annotated as timely filed and forwarded to the AAO.

Neither the Act nor the pertinent regulations grant U.S. Citizenship and Immigration Services (CIS) authority to extend the 33-day time limit for filing an appeal. The director thus had no authority to extend the applicant's 33-day time limit for filing an appeal. The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states, however, 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 Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601 application) was denied because the applicant failed to establish his wife would suffer extreme hardship if he were denied admission into the United States. The applicant's untimely appeal contains a letter addressing previously claimed, and new hardship that his wife would suffer if his Form I-601 application were denied, and the untimely appeal contains new medical and additional mental counseling evidence. The AAO finds that the untimely appeal thus meets the requirements of 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 director in Panama. 8 C.F.R. § 103.5(a)(1)(ii). Therefore, the director 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 director for consideration as a motion to reopen.