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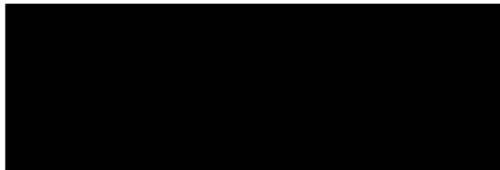
FILE: [REDACTED] Office: CHICAGO, IL

Date: **JUN 17 2009**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be dismissed and the underlying application denied.

The motion is untimely. The regulation at 8 C.F.R. 103.5(a)(1)(i), states that a motion must be filed within 30 days of the decision that the motion seeks to reopen or reconsider. The regulation at 8 C.F.R. § 103.a(b) states that whenever a person is required to act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Here, the AAO mailed its decision to the petitioner on January 3, 2007. Therefore, any motion should have been filed by February 5, 2007. However, the petitioner did not file his motion until February 16, 2007.

Counsel asserts that the motion is a motion to reconsider. According to the regulation at 8 C.F.R. § 103.5(a)(3), 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 Citizenship and Immigration Services (USCIS) policy. The instant motion does not assert that the AAO's previous decision incorrectly applied the law or USCIS policy. According to the regulation at 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. In this case, counsel requests the AAO reconsider its previous decision based on a "crucial change in [the applicant's] life circumstances" as the health of the applicant's son has purportedly deteriorated. Counsel submits an affidavit from the applicant's wife as well as medical documentation to support his motion. Thus, the motion is closer to a motion to reopen.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that a late motion to reopen may be excused in the discretion of USCIS where it is demonstrated that the delay was reasonable and was beyond the control of the applicant. However, counsel makes no attempt to explain why the motion was untimely filed. In addition, the medical documentation submitted with the motion indicate that the applicant's son was already seeking medical treatment for his growth problem in September 2005, more than a year before the AAO issued its previous decision. The AAO also notes that the affidavit from the applicant's wife was not signed until February 12, 2007, after more than 33 days had already passed from the date the AAO mailed its previous decision. Under these circumstances, there is no reason to believe the delay was reasonable and beyond the applicant's control. Accordingly, the motion is dismissed as untimely filed.

ORDER: The motion is dismissed and the underlying application denied.