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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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

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FILE: [REDACTED]
CDJ 2004 752 140

Office: CIUDAD JUAREZ, MEXICO

Date: **JAN 22 2010**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(a)(9)(B)(v) and 212(h) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), 1182(h)

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

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 after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the Officer in Charge issued the decision on November 14, 2006. *See Decision of the Officer in Charge*, dated Nov. 14, 2006. The Officer in Charge properly gave notice to the applicant that he had 33 days to file the appeal. *See id.* Here, day 33 fell on Sunday, December 17, 2006. Accordingly, the appeal was due on Monday, December 18, 2006. The applicant's appeal was dated and filed in February, 2007. *See Form I-290B, Notice of Appeal.* Accordingly, the appeal was untimely filed. Because neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal, the appeal must be rejected.

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. *See* 8 C.F.R. § 103.3(a)(2)(v)(B)(2). 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. 8 C.F.R. § 103.5(a)(3). 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. *Id.* A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The applicant presents no new facts to be proved or reasons for reconsideration supported by any pertinent precedent decisions. On the Form I-290B, Notice of Appeal, counsel indicated that he would file a brief or evidence within 30 days. To date, almost three years later, the AAO has received nothing further from counsel or the applicant. The untimely appeal does not meet the requirements of a motion to reopen or to reconsider, and will be rejected.

ORDER: The appeal is rejected.