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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**

H2

**JAN 28 2010**

FILE:

Office: MEXICO CITY (CIUDAD JUAREZ)

Date:

IN RE:

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

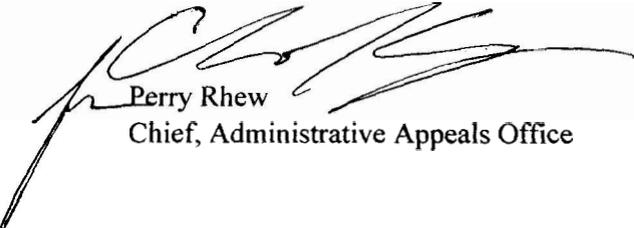
ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Mexico City. The matter 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 of 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 February 16, 2007. It is noted that the officer in charge properly gave notice to the applicant that he had 33 days to file the appeal, until March 21, 2007. The Notice of Appeal (Form I-290B), is dated March 31, 2007. Accordingly, the appeal was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. As the appeal was untimely filed, the appeal must be dismissed. Nevertheless, 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).

Here, the applicant's father states as the reason for the appeal:

Based on my status as permanent alien here in the USA, my family and sons [are supposed] to be here with me reunited. On 09/2006 we did have an appointment in Cd. Juarez to adjust the status of my son [REDACTED]. A]n officer told us that he can not be granted as a resident at that time and he has to wait until he can be granted. We are asking for my son case to be reopen and consider my status since that time.

No additional evidence was submitted with the appeal.

The untimely appeal fails to meet the requirements of either a motion to reconsider or a motion to reopen. The applicant's waiver application and Petition for Alien Relative (Form I-130) in the

record had already indicated that his father was a lawful permanent resident. Therefore, the untimely appeal fails to present any new facts to be proved in the reopened proceeding. Furthermore, the untimely appeal fails to state the reasons for reconsideration or assert that the decision was incorrect based on the evidence of record at the time of the initial decision. Accordingly, the appeal is rejected.

**ORDER:** The appeal is rejected.