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



U.S. Citizenship
and Immigration
Services

H₂

FILE:

Office: WASHINGTON, DC
(NORFOLK, VA)

Date:

APR 01 2011

IN RE:

APPLICATION: Application for Waiver of Ground of Excludability pursuant to section 212(h) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Acting District Director, Washington, D.C. and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as it was both improperly and untimely filed.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) requires that an affected party file the appeal on the Form I-290B, Notice of Appeal or Motion, with the required fee and submit the complete appeal within 30 days of service of the unfavorable decision. If the decision is 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 Acting District Director issued the decision on August 28, 2009. It is noted that the Acting District Director properly gave notice to the applicant that he had 30 days (33 days if mailed) to file the appeal, advising him to consult the United States Citizenship and Immigration Services (USCIS) website to obtain information relating to the required filing fee. On September 29, 2009, the applicant submitted Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals from a Decision of an INS Officer, with a fee of \$110. On December 30, 2010, the Acting District Director rejected the applicant's appeal, notifying him that it had been submitted on the wrong form and with the wrong fee. The Acting District Director informed the applicant that he would be given until January 31, 2011 to submit the Form I-290B, with the correct fee of \$585. On February 1, 2011, the applicant submitted the Form I-290B, with a fee of \$585.

The AAO finds that, on December 30, 2010, the Acting District Director correctly rejected the applicant's appeal as improperly filed since it was not submitted on the Form I-290B and accompanied by a fee of \$585. However, the Acting District Director erred in informing the applicant that he could still appeal the denial of his waiver application. Neither the Act nor the pertinent regulations allow for the extension of the 33-day time limit for filing an appeal. Accordingly, the appeal will be rejected as untimely filed. Moreover, the AAO also finds the appeal was not accompanied by a fee of \$630, the required fee for an appeal as of November 23, 2010. Therefore, the applicant's appeal will also be rejected as improperly filed.

ORDER: The appeal is rejected as untimely and improperly filed.