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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



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Date: Office: NEW YORK, NY

FILE:

APR 18 2011

IN RE:

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

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 waiver application was denied by the District Director, New York, New York. The Administrative Appeals Office (AAO) dismissed a subsequent appeal and the matter is now before us as a Motion to Reopen or Reconsider. The motion will be rejected as untimely filed.

In order to properly file a Motion to Reopen or Reconsider, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the motion within 30 days of the decision that the motion seeks to reopen or reconsider. 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 AAO issued the decision on July 1, 2010 and properly gave notice to the applicant that any motion was to be filed within 30 days and submitted to the office that had originally decided her case. However, on Friday, July 30, 2010, the applicant submitted the Form I-290B, Notice of Appeal or Motion, to the AAO, which returned the Form I-290B on Monday, August 2, 2010. The applicant's Motion to Reopen or Reconsider was subsequently received by United States Citizenship and Immigration Services (USCIS) on August 11, 2010, 41 days after the AAO issued the decision. Accordingly, it was untimely filed.

While there is no authority to extend the filing period for a Motion to Reconsider, the AAO notes that the regulation at 8 C.F.R. § 103.5(a)(1)(i) allows USCIS to excuse the late filing of a Motion to Reopen "where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner." In the present case, the applicant's Motion to Reopen or Reconsider was not received by USCIS during the regulatory filing period because the applicant failed to submit it to the office that had originally decided her case, as directed in the AAO's July 1, 2010 decision. Therefore, we do not find the delay in the filing of the applicant's motion to have been reasonable or beyond her control and will not excuse its late filing.

In that the applicant's Motion to Reopen or Reconsider was untimely filed, it must be rejected.

ORDER: The Motion to Reopen or Reconsider is rejected.