



U.S. Citizenship
and Immigration
Services



H6

DATE: **DEC 06 2012** OFFICE: CIUDAD JUAREZ, MEXICO

FILE: 

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:



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.

Thank you,

A handwritten signature in cursive script that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that an affected party must file a complete appeal within 30 days after service of an unfavorable decision. If the decision is mailed, the 30-day period for submitting an appeal begins 3 days after it is mailed. 8 C.F.R. § 103.8(b). The date of filing is the date of actual receipt of the appeal, not the date of mailing. *See* 8 C.F.R. § 103.2(a)(7)(i). The appeal is properly filed when it is stamped to reflect the time and date of actual receipt, it is properly signed and executed, and the required filing fee is attached or a waiver of the filing fee is granted. *Id.*

The record reflects that on September 10, 2010, the Field Office Director sent the decision to the applicant at the applicant's address of record. It is noted that the Director stated that the applicant had 33 days to file an appeal. The appeal, therefore, was due on October 13, 2010, a Wednesday. Although the applicant's counsel dated the appeal on October 7, 2010, the correct fee for the appeal was not paid by counsel until January 20, 2011, 99 days after the decision was issued. In his January 12, 2011 letter, counsel acknowledges that he was not able to timely submit the Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, and a valid money order by the deadline, and he requests a new waiver appointment. Therefore, the appeal was untimely filed and must be rejected.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the time limit for filing an appeal. However, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) provides that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. § 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3), 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: (1) 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 USCIS policy; and (2) 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).

The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Field Office Director of the Ciudad Juarez, Mexico Field Office. *See* 8 C.F.R. § 103.5(a)(1)(ii). In the present matter, the record shows that the Field Office Director has considered the appeal as a motion and determined that reversal of his decision is not warranted.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.