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U.S. Department of Homeland Security
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Er

[Redacted]

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: **MAR 05 2009**

IN RE: Applicant: [Redacted]

APPLICATION: Application for Refugee Travel Document Pursuant to 8 C.F.R. § 223.1(b).

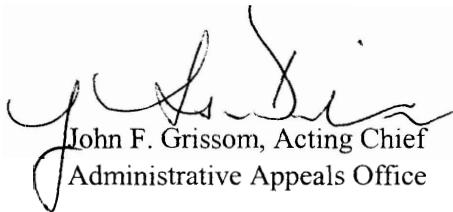
ON BEHALF OF APPLICANT:

[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.

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, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant is a native and citizen of Iran, who seeks to obtain a refugee travel document pursuant to 8 C.F.R. § 223.1(b). The director denied the application because the applicant, who was granted withholding of removal by an immigration judge, was not entitled to a refugee travel document because he was not granted asylum or refugee status.

An application or petition shall be regarded as properly filed when it is signed and executed and the required filing fee is attached. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions will not retain a filing date. 8 C.F.R. § 103.2(b)(7)(i).

In order to properly file an appeal, the affected party must file the complete appeal within 30 days of service of the unfavorable decision. 8 C.F.R. § 103.3(a)(2)(i). **If the decision was mailed, the appeal must be filed within 33 days.** See 8 C.F.R. § 103.5a(b). An application received in a U.S. Citizenship and Immigration Services (USCIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office. 8 C.F.R. § 103.2(a)(7)(i)

The record indicates that the director issued the decision on October 23, 2008. On November 25, 2008, the applicant filed an appeal of that decision; however, the director rejected the appeal because the applicant failed to submit the proper fee. The applicant resubmitted the appeal with the proper fee on December 11, 2008, or 49 days after the decision was issued. Accordingly, the appeal was untimely filed.

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. An untimely-filed appeal must meet specific requirements to be treated as a motion. The regulation at 8 C.F.R. § 103.5(a)(2) requires that a motion to reopen state the new facts to be provided in the reopened proceeding, supported by affidavits or other documentary evidence. Furthermore, 8 C.F.R. § 103.5(a)(3) requires that 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 USCIS policy.

A review of the appeal reveals that it does not meet the requirements of a motion.

A grant of withholding of removal under section 241(b)(3) of the INA is not equal to a grant of asylum under section 208 of the INA or a grant of refugee status under section 207 of the INA. The “benefits” of being granted withholding of removal are that an applicant: (1) cannot be removed to a specified country unless The Department of Homeland Security can show that changed country conditions have reduced the risk of persecution; and (2) may apply for and receive employment authorization to work in the United States. The Department of Homeland Security can, however, remove the person to any country not covered by the withholding grant. Furthermore, an applicant who is granted withholding of removal still has a final order of removal against him. Therefore, if

an applicant travels outside of the United States he will self-execute his removal order. Withholding of removal also does not lead to permanent resident status and does not grant derivative benefits to an applicant's spouse or children.

The regulation at 8 C.F.R. § 223.2(b)(2)(i) states clearly that a refugee travel document may be granted only to an applicant who "either holds valid refugee status under section 207 of the Act, valid asylum status under section 208 of the Act, or is a permanent resident and received such status as a direct result of his or her asylum or refugee status." Nothing that counsel presents on appeal contains new facts or shows that the director's decision was based upon an incorrect application of law or USCIS policy. Accordingly, the late-filed appeal must be rejected.

The AAO takes note that, on appeal, the applicant presents evidence that he was granted a refugee travel document, which he used to depart from the United States and return on more than one occasion in 2008. The refugee travel document was issued in error, as the applicant was granted withholding of removal on August 31, 2006, prior to the date of issuance of the refugee travel document.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be rejected.

ORDER: The appeal is rejected.