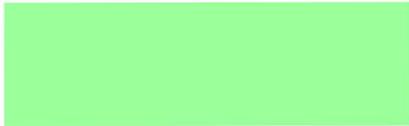




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: Office: CALIFORNIA SERVICE CENTER FILE:



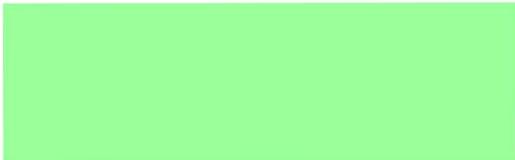
MAR 01 2013

IN RE: Applicant:



APPLICATION: Application to Register Permanent Residence or Adjust Status Pursuant to
Section 245 of the Immigration and Nationality Act, 8 U.S.C. § 1255

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.


for Ron M. Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application to adjust status was denied by the Director, California Service Center (director). The Administrative Appeals Office (AAO) dismissed the subsequently filed appeal and a motion to reopen. The matter is now before the AAO on a second motion to reopen. The motion will be rejected as untimely filed. The Form I-485 application remains denied.

The record reflects that the applicant is a native and citizen of Mexico, who filed a Form I-485, Application to Register Permanent Residence or Adjust Status and a Form I-601, Application for Waiver of Grounds of Inadmissibility. The director denied the Form I-485 and the Form I-601. The applicant submitted a Notice of Appeal or Motion, Form I-290B to appeal the director's decisions. The applicant indicated on part 2 of the Form I-290B that his motion is related to the Form I-485 not the Form I-601. The AAO accepted the Form I-290B as it relates to the appeal of the Form I-485, and on April 2, 2012, dismissed the motion as untimely filed because the applicant filed the motion more than three years after the decision of the director. The applicant, through his counsel files the instant Form I-290B. Counsel provided the receipt number as [REDACTED] the decision date as April 2, 2012 and the office where the decision was issued as California Service Center.¹

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that an affected party or the attorney or representative of the record 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. § 103.5a(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).

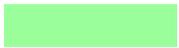
The record reflects that the AAO issued its decision on April 2, 2012 and the appeal dated May 3, 2012, was not received until May 7, 2012, thirty-six (36) days after the decision by the AAO. Therefore, the motion was untimely filed and must be rejected.

On appeal, counsel asserts "the 33rd day for filing a motion to reconsider in the instant case is Saturday, April 5, 2012 . . . extended until Monday. The instant motion is being filed via FEDEX on Thursday, May 3, 2012 to be delivered the next day, Friday, May 4, 2012. Under 8 C.F.R. § 103.5a(b), 'Service by mail is complete upon mailing.' Thus, the instant motion to reconsider is timely." Counsel's assertions are without merit. As clearly indicated above, the date of filing the Form I-290B is the date of actual receipt of the appeal, not the date of mailing. *See* 8 C.F.R. § 103.2(a)(7)(i).

Neither the Act nor the pertinent regulations grant the AAO authority to extend the time limit for filing an appeal. As the motion was untimely filed, the appeal must be rejected.

¹ The AAO notes that the receipt number provided by counsel relates to the original Form I-485 application the applicant filed on July 30, 2007 and the decision date of April 2, 2012 relates to the AAO decision dismissing the applicant's first motion to reopen.

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ORDER: The motion is rejected.