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



U.S. Citizenship  
and Immigration  
Services

A3

FILE:

Office: WASHINGTON DISTRICT

Date:

**AUG 10 2009**

IN RE:

APPLICATION: Application for Status as Permanent Resident Pursuant to Section 13 of the Act of September 11, 1957, 8 U.S.C. § 1255b.

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision 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).

hn F. Grissom

Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Washington, D.C. and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant is a native and citizen of the Philippines who is seeking to adjust her status to that of lawful permanent resident under section 13 of the Act of 1957 ("Section 13"), Pub. L. No. 85-316, 71 Stat. 642, as modified, 95 Stat. 1611, 8 U.S.C. § 1255b, as an alien who performed diplomatic or semi-diplomatic duties under section 101(a)(15)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(A)(ii).

The field office director denied the application for adjustment of status after determining that the applicant had failed to demonstrate that compelling reasons prevent her return to the Philippines. The field office director also noted that the Department of State issued its opinion on November 20, 2008 advising that the applicant's reasons to remain in the United States are not compelling.

An affected party has 30 days from the date of an adverse decision to file an appeal. 8 C.F.R. § 103.3(a)(2)(i). If the adverse decision was served by mail, an additional three-day period is added to the 30-day period. 8 C.F.R. § 103.5a(b). The record reflects that the director sent his decision on January 15, 2009 to the applicant and to counsel at their addresses of record. United States Citizenship and Immigration Services (USCIS) received the appeal on February 20, 2009, or 36 days later. The date of filing is not the date of mailing, but the date of actual receipt. 8 C.F.R. § 103.2(a)(7)(i). Therefore, the appeal was untimely filed.

An appeal that is not filed within the time allowed must be rejected as improperly filed. 8 C.F.R. § 103.3(a)(2)(v)(B)(1). If, however, an untimely appeal meets the requirements of a motion to reopen or reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

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).

On appeal, counsel submits a brief and Internet printouts of newspaper articles and other country specific information. The additional information does not present new facts and counsel's brief does not state reasons for reconsideration that are supported by pertinent precedent decisions. As neither counsel nor the applicant presents new facts to be considered, or provides any precedent decisions to establish that the director's denial was based on an incorrect application of law or USCIS policy, the appeal will not be treated as a motion to reopen or reconsider and will, therefore, be rejected.

As always, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden.

**ORDER:** The appeal is rejected as untimely filed.