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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS2090  
Washington, DC 20529-2090



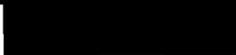
U.S. Citizenship  
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FILE:



Office: WASHINGTON DISTRICT

Date:

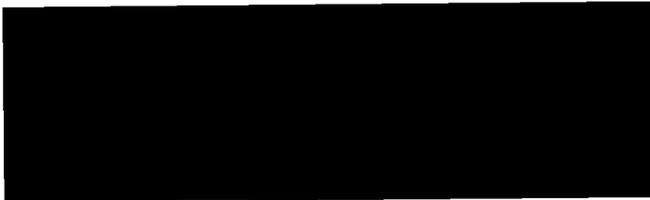
**MAR 15 2010**

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.

Perry Rhew  
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Zimbabwe who is seeking to adjust her status to that of a 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)(G)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(G)(i).

The field office director denied the Form I-485, Application to Register Permanent Residence or Adjust Status, on February 12, 2009. The field office director determined that the applicant had failed to demonstrate that compelling reasons prevent her return to Zimbabwe. The field office director also noted that the Department of State issued its opinion on November 21, 2008 advising that it could not favorably recommend the applicant's adjustment of status. The field office director further observed that the applicant had misrepresented her intentions when re-entering the United States on January 30, 2002 as a G-1 visa holder as her status as a G-1 nonimmigrant had been terminated on January 6, 2002.

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 February 12, 2009 to the applicant and prior counsel at their addresses of record. United States Citizenship and Immigration Services (USCIS) received the appeal on March 18, 2009, or 34 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, the applicant's affidavit, information on current country conditions, and information that the applicant's G-1 status did not expire until March 2002, a date subsequent to the applicant's last entry into the United States in G-1 status. The AAO is aware of the current country conditions in Zimbabwe but finds that the applicant has not provided new or substantive evidence demonstrating that she would be a target of or would be at greater risk of harm because of her specific past government employment, political activities or other related reasons. The letter submitted on the letterhead of the Permanent Mission of the Republic of Zimbabwe to the United Nations does not

explain the United States Department of State records that the applicant's G-1 status expired on January 6, 2002. Neither counsel nor the applicant in her affidavit on appeal submits evidence demonstrating that the director's determination was in error.

As neither counsel nor the applicant presents new facts to be considered and also fails to provide any precedent decisions to establish that the director's denial was based on an incorrect application of law or USCIS policy, the AAO does not find that the appeal should be treated as a motion to reopen or reconsider. As the appeal was untimely filed, the appeal will be rejected.

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

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