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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

A3



DATE: FEB 13 2012

Office: WASHINGTON DISTRICT OFFICE

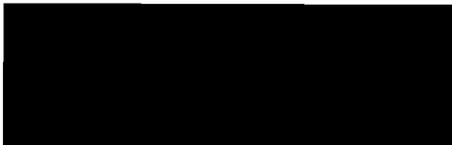
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IN RE:

Applicant:

PETITION: 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 PETITIONER:



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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Washington, D.C. and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be dismissed as untimely filed.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the motion within 30 days of service of the unfavorable decision. If the decision was mailed, the motion must be filed within 33 days. See 8 C.F.R. § 103.5a(b). A failure to timely file a motion to reopen may be excused at the discretion of the AAO where it is demonstrated that the delay was reasonable and beyond the control of the applicant. A failure to timely file a motion to reconsider may not be excused. 8 C.F.R. § 103.5(a)(1)(i). A motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The decision of the AAO was issued on February 20, 2009. The AAO properly informed the applicant that any motion must be submitted to the office that originally decided his case by filing a Form I-290B, Notice of Appeal or Motion, with the correct fee and that any motion must be filed within 30 days of the decision that the motion sought to reopen, as required by 8 C.F.R. 103.5(a)(1)(i). The Form I-290B, Notice of Appeal or Motion, was not properly filed until March 27, 2009, or thirty-five days after the AAO decision was issued.¹

Counsel does not assert and the record does not show that the failure to timely file the motion to reopen is a reasonable delay beyond the control of the applicant. 8 C.F.R. § 103.5(a)(1)(i). As a matter of discretion, the applicant's failure to file the motion to reopen within the period allowed will not be excused as either reasonable or beyond the control of the applicant. Accordingly, the motion to reopen and the motion to reconsider will be dismissed as untimely filed.

ORDER: The motion is dismissed. The AAO's previous February 20, 2009 decision is affirmed. The application remains denied.

¹ The applicant in this matter submitted fees for five of his immediate relatives who had submitted applications as the immediate relatives of 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 records, of the applicant's immediate relatives, however, do not include a Form I-290B indicating that each of the immediate relatives is filing a motion to reopen and reconsider. Accordingly, no decision will be issued on the five applications.