



U.S. Citizenship  
and Immigration  
Services

H<sub>1</sub>

FILE:

[REDACTED]

Office: MIAMI

Date:

**FEB 25 2010**

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(g) of the Immigration and Nationality Act, 8 U.S.C. § 1182(g)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The District Director, Miami, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed. The matter will be returned to the district director for further action.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the district director issued the decision on April 21, 2001. It is noted that the district director gave notice to the applicant that he had 30 days to file the appeal. The applicant dated the appeal September 20, 2007 and it was received by United States Citizenship and Immigration Services on September 24, 2007, over six years after the district director issued his decision. Accordingly, the appeal was untimely filed.

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

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. 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).

In the present matter, the applicant presents a new fact. Specifically, the applicant reports that, since the denial of his Form I-601 application for a waiver, he began receiving counseling and treatment due to his Human Immunodeficiency Virus (HIV) infection. The applicant supports this assertion with medical documentation. Thus, the applicant has met the requirements for a motion to reopen.

The applicant was previously inadmissible under section 212(a)(1)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(1)(A)(i), due to his infection with HIV, which had been designated as a communicable disease of public health significance. *Decision of the District Director*, dated April 21, 2001. As of January 4, 2010, HIV infection no longer renders an applicant inadmissible under section 212(a)(1)(A)(i) of the Act, as the regulation at 42 C.F.R. § 34.2(b) was amended to remove HIV infection from the definition of “communicable disease of public health significance.” 74 Fed. Reg. 56547 (November 2, 2009). Accordingly, the applicant is no longer inadmissible under section 212(a)(1)(A)(i) of the Act due to his HIV infection, and he does not require a waiver of inadmissibility under section 212(g) of the Act.

Based on the foregoing, the applicant is not inadmissible under section 212(a)(1)(A)(i) of the Act, he does not require a waiver of inadmissibility under section 212(g) of the Act, and his Form I-601 application for a waiver is moot. The matter will be returned to the district director with instructions to reopen the applicant’s Form I-485 application to adjust his status to permanent resident *sua sponte* for

further consideration in light of the fact that the applicant is not inadmissible for HIV infection, pursuant to 8 C.F.R. § 103.5(a)(5)(i).

**ORDER:** The appeal is rejected as untimely filed. The district director shall reopen the denial of the Form I-485 application on motion and continue to process the adjustment application.