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FILE:   
(CDJ 1998 537 003 relates)

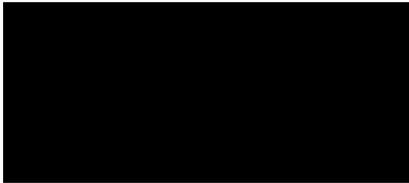
Office: CIUDAD JUAREZ, MEXICO

Date: SEP 20 2007

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i)  
of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



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.

*Robert P. Wiemann*

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Officer in Charge, Ciudad Juarez, Mexico, denied the Form I-601, Application for Waiver of Ground of Excludability (Form I-601). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

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 with the office where the unfavorable decision was made 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). Contrary to the applicant's representative's assertions in his letter dated October 24, 2005, 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 officer in charge issued the decision on August 30, 2005. It is noted that the officer in charge properly gave notice to the petitioner that it had 33 days to file the appeal, and noted that the appeal must be filed with the office that issued the unfavorable decision, which in this case was the American Consulate General in Ciudad Juarez. Despite the instructions provided, the applicant sent the appeal directly to the AAO; the AAO received the appeal on October 17, 2005 (49 days after the unfavorable decision was made), and properly rejected the appeal as being improperly filed. The applicant re-sent the appeal to the American Consulate General in Ciudad Juarez on October 24, 2005 and it was properly received by the officer in charge on November 11, 2005, 74 days after the decision was issued. Accordingly, the appeal was untimely filed. The officer in charge erroneously annotated the appeal as timely and forwarded the matter to the AAO.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. 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). A motion to reconsider must 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 Service policy. A motion to reconsider a decision on an application or petition must, when filed, also 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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

In support of the appeal, the following documents were provided: a letter from the applicant's spouse, a lawful permanent resident, dated September 25, 2005, outlining the hardships the applicant and their children will face if a waiver of inadmissibility is not granted to the applicant; a letter and translation from a physician in regards to the applicant's son's medical conditions, dated September 7, 2005; and copies of the biographic page, visa page and I-94 Card from the applicant's passport.

Here, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. The items provided do not state new facts with respect to the applicant's spouse's hardship were the applicant's waiver not granted, nor do they establish that the decision made by the officer in charge was based

on an incorrect application of law or Service policy. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2). As the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

**ORDER:** The appeal is rejected.