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FILE:

Office: PHILADELPHIA, PA

Date:

NOV 12 2009

IN RE:

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.

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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Philadelphia, Pennsylvania. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 denied the waiver application on August 8, 2005, after finding that “[b]ecause you have not submitted sufficient evidence showing a qualifying relative would suffer ‘extreme hardship,’ your application cannot be favorably adjudicated.” *Decision of the District Director*, dated August 8, 2005. Counsel concedes that the district director properly gave notice to the applicant to file the appeal to the Administrative Appeals Office (AAO); however, counsel states the district director improperly enclosed a Notice of Appeal to the Board of Immigration Appeals from a Decision of an INS Officer (Form EOIR-29), which counsel completed, and further contends that the district director improperly forwarded the case to the Board of Immigration Appeals rather than the AAO. *Notice of Appeal or Motion (Form I-290B)*, dated September 27, 2007 (motion to reconsider). On August 28, 2007, the Board of Immigration Appeals dismissed the appeal for lack of jurisdiction. *Decision of the Board of Immigration Appeals*, dated August 28, 2007. On September 28, 2007, counsel filed an admittedly untimely motion to reconsider with the district director, asking that the director consider the motion in the exercise of discretion and submitting additional evidence. *Id.* The field office director accepted the motion as timely filed as a matter of discretion. *Decision of the Field Office Director*, dated May 2, 2008. After considering the evidence counsel submitted with his motion, the field office director dismissed the motion, stating, “[u]pon review of the record, you have not presented evidence that a qualifying family member would experience extreme hardship if you are removed from the United States.” *Id.*

On May 30, 2008, counsel filed a Petition for Mandamus and Declaratory Judgment with the U.S. District Court for the Eastern District of Pennsylvania. On February 3, 2009, the Court dismissed the case as premature and lacking the jurisdiction to grant the relief the applicant seeks. *Memorandum and Order in the United States District Court for the Eastern District of Pennsylvania*, dated February 3, 2009. More than three months later, on May 12, 2009, counsel filed the instant appeal with the AAO. *Notice of Appeal or Motion (Form I-290B)*, dated May 12, 2009.

The AAO finds that the appeal, filed almost four years after the district director’s initial decision, is untimely filed. Notably, counsel did not file an appeal to the AAO of the field office director’s denial of the motion to reconsider dated May 2, 2008. Moreover, counsel waited over three months after the District Court dismissed its mandamus petition to file the instant appeal.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. As the appeal was untimely filed, the appeal must be dismissed. Although 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, here, the field office director has already considered, and rejected, counsel's motion.

**ORDER:** The appeal is dismissed.