

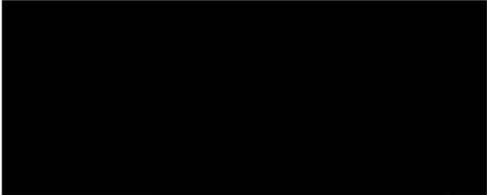


U.S. Citizenship
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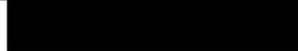
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FILE:



Office: FRANKFURT, GERMANY

Date:

NOV 19 2009

IN RE:

Applicant:



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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge (OIC), Frankfurt, Germany. 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 within 30 days of after 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 OIC issued the decision on February 8, 2007. It is noted that the OIC properly gave notice to the applicant that he had 33 days to file the appeal. The undated appeal was received by the OIC on July 26, 2007, 168 days after the decision was issued. Accordingly, the appeal was untimely filed.

It is noted that the denial letter clearly stated the correct form of payment, but the applicant did not follow the directions. On March 12, 2007, the applicant was sent notice regarding the correct form of payment. When the March 12 notice was sent, the applicant was not represented so the fact that counsel did not receive the notice until May 29, 2007 is irrelevant. The appeal was not properly filed with the correct form of payment until July 26, 2007.

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).

The OIC reviewed the appeal and determined that it did not meet the definition of a motion.

As the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

ORDER: The appeal is rejected.