



U.S. Citizenship
and Immigration
Services

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FILE:

Office: KINGSTON, JAMAICA

Date:

NOV 25 2009

IN RE:

Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v),
of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge (OIC), San Juan, Puerto Rico, and 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 proper fee must accompany the appeal. *See* 8 C.F.R. § 103.2(a)(2)(i).

The record indicates that the OIC issued the decision on July 20, 2007. It is noted that the OIC properly gave notice to the applicant that she had 33 days to file the appeal. The appeal was received by the OIC on March 31, 2008, which is 255 days after the decision was issued. Accordingly, the appeal was untimely filed.

It is noted that in the appeal the applicant states that she did not receive the OIC's decision until March 18, 2008. On January 14, 2008, the applicant was sent notice that her appeal was received on September 6, 2007, and was being returned as it was unsigned and without the proper fee. The appeal was not properly filed until March 31, 2008.

Neither the Immigration and Nationality Act (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 submitted appeal fails to meet the requirements of a motion to reopen or 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.