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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: PHOENIX, AZ Date: **MAY 27 2010**

IN RE: [REDACTED]

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

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Phoenix, Arizona. 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 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 field office director issued the decision on January 8, 2008. It is noted that the field office director properly gave notice to the applicant that he had 33 days to file the appeal, until February 11, 2008. According to the applicant's Notice of Appeal (Form I-290B), the appeal was not dated until February 20, 2008, and was not received by United States Citizenship and Immigration Services (USCIS) until February 26, 2008. Accordingly, the appeal was untimely filed.

The AAO notes that even if the applicant timely filed his Form I-290B, we would have to dismiss the appeal as moot. The AAO observes that the applicant was instructed to file a Form I-601 within twelve weeks of the director's October 14, 2004 notice of intent to deny his Application to Register Permanent Residence or Adjust Status (Form I-485), but the applicant failed to timely file such application. Pursuant to the immigration regulations at 8 C.F.R. § 103.2(b)(8)(iv), twelve weeks is the maximum period allowed for a response to a notice of intent to deny. By the time the director received the applicant's Form I-601 on August 30, 2007, the applicant's underlying Form I-485 adjustment application had already been denied.¹ A Form I-601 application for a waiver of inadmissibility is viable when filed with a pending adjustment of status application or immigrant visa application. *See* 8 C.F.R. § 212.7(a). Therefore, the applicant no longer had an underlying application to support the filing of his Form I-601 waiver. There is no evidence showing that the adjustment application was reopened by the director after being denied on April 27, 2006.

Based on the foregoing, the applicant's Form I-290B must be rejected by the AAO. The applicant must submit a new Form I-485 application or visa application and a new Form I-601 application, with appropriate fees, for the adjudication of a waiver of inadmissibility. *See* 8 C.F.R. § 103.2(a)(7)(ii).

ORDER: The appeal is rejected as untimely filed.

¹ If the petitioner or applicant fails to respond to a request for evidence or to a notice of intent to deny by the required date, the application or petition may be summarily denied as abandoned, denied based on the record, or denied for both reasons. *See* 8 C.F.R. § 103.2(b)(13)(i).