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

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**U.S. Citizenship
and Immigration
Services**

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MAR 08 2011

FILE: [REDACTED] Office: COLUMBUS, OH Date:

IN RE: JENIFER AKU

APPLICATION: Application for Waiver of Ground of Excludability pursuant to section 212(h) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Columbus, Ohio and is now before the Administrative Appeals Office (AAO) on appeal.

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 July 12, 2007. It is noted that the Field Office Director properly gave notice to the applicant that he had 30 days (33 days if mailed) to file the appeal and that the appeal was not to be submitted directly to the AAO. However, on August 13, 2007, the applicant submitted the Form I-290B, Notice of Appeal or Motion, to the AAO, which returned the application that same day. The appeal was subsequently received by United States Citizenship and Immigration Services on July 21, 2007, 40 days after the issuance of the decision. Accordingly, it was untimely filed.

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 rejected.

In addition, the record reflects that on May 13, 2010 the applicant voluntarily departed the United States after being ordered removed and is currently residing in Ghana. As the applicant is no longer residing in the United States she is not eligible to adjust status, rendering her Form I-485 and related Form I-601 moot. If she wishes to return to the United States, the applicant will need to apply for an immigrant visa at the U.S. Embassy in Accra at which time she will be advised of any further documentation she may require.

ORDER: The appeal is rejected as untimely filed.