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



H₂

[REDACTED]

DATE: **OCT 14 2011** Office: LOS ANGELES

FILE: [REDACTED]

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:

[REDACTED]

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.

Thank you,

for Michael Shumway
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Officer Director, Los Angeles, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that an affected party must file a complete appeal within 30 days after service of an unfavorable decision. If the decision is mailed, the 30-day period for submitting an appeal begins 3 days after it is mailed. 8 C.F.R. § 103.5a(b). The date of filing is the date of actual receipt of the appeal, not the date of mailing. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record reflects that the field office director sent the decision on June 19, 2009 to the applicant at the applicant's address of record. It is noted that the field office director stated that the applicant had 33 days to file an appeal. It is also noted that the field office director indicated that the appeal should not be filed directly with the AAO. Counsel did not properly file an appeal (Form I-290B) until September 22, 2009.¹

Neither the Act nor the pertinent regulations grant the AAO authority to extend the time limit for filing an appeal. However, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) provides that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. § 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3), 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: (1) 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 USCIS policy; and (2) 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).

The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the field office director of the Los Angeles, California USCIS office. *See* 8 C.F.R. § 103.5(a)(1)(ii).

The matter will therefore be returned to the field office director. If the field office director determines that the late appeal meets the requirements of a motion, the motion shall be granted and a new decision will be issued.

¹ The record indicates that a "motion to reopen on services own motion" was filed on July 15, 2009 with the field office director in Los Angeles, California. That motion was not filed on Form I-290B and was rejected by the Field Office Director on July 15, 2009. The applicant then filed Form I-290B on July 22, 2009 at the incorrect USCIS office and the form and fee was rejected and returned to the applicant. Because the deadline for the appeal in this case was July 22, 2009, the decision of the Field Office Director became final on that date regardless of when the applicant received notification of the rejection of his improperly filed appeal. 8 C.F.R. § 103.3(a)(2)(i).

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.