

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



U.S. Citizenship
and Immigration
Services

ttz

[REDACTED]

DATE: **DEC 19 2012** OFFICE: CHICAGO, IL

FILE: [REDACTED]

IN RE: APPLICANT: [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)

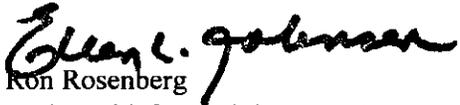
ON BEHALF OF APPLICANT:

[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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). A motion to reopen was then filed. The motion will be rejected.

In order to properly file a motion to reopen, the regulation at 8 C.F.R. § 103.5(a) provides that the affected party or the attorney or representative of record must file the complete motion within 30 days of service of the unfavorable decision. If the decision was mailed, the motion 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). A failure to file within the period may be excused in the discretion of the Service where it was demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *See* 8 C.F.R. § 103.5(a)(1)(i).

The record indicates that the Chief, Administrative Appeals Office issued the decision on February 2, 2012. It is noted that the AAO properly gave notice to the applicant that he had 30 days to file a motion to reopen or reconsider at the office which originally decided the case.

The cover letter to the AAO decision instructed the applicant to file any motion with the office that originally decided the case. Despite these instructions, counsel initially filed the motion with the AAO. It was not properly received by the field office until March 16, 2012, or 43 days after the decision was issued. Furthermore, the applicant has not demonstrated that the delay was reasonable and beyond his control. Accordingly, the motion was untimely filed.

It is also noted that even if this motion were timely filed, it does not meet the requirements at 8 C.F.R. §§ 103.5(a)(1)(iii), which lists the filing requirements for motions to reopen and motions to reconsider. Section 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." In this matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, because the instant motion also did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), even if it were timely filed it would have to be dismissed.

As the motion was untimely filed, it must be rejected.

ORDER: The motion is rejected.