



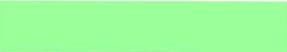
U.S. Citizenship
and Immigration
Services

(b)(6)



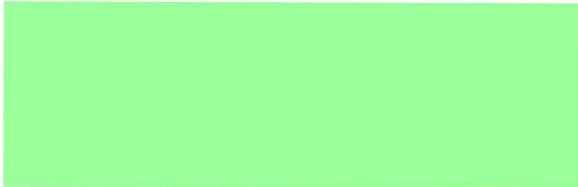
DATE: APR 22 2013 Office: NEWARK, NJ

FILE: 

IN RE: Applicant: 

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

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Newark, New Jersey. The denial was appealed to the Administrative Appeals Office (AAO). The appeal was dismissed. The applicant filed a motion to reopen and reconsider the AAO decision, which is now before the AAO. The motion will be granted, and the decision of the AAO will be affirmed.

The applicant is a native and citizen of Colombia. He was found to be inadmissible to the United States pursuant to section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(h), for having been convicted of a crime involving moral turpitude and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking a benefit under the Act through willful misrepresentation. The Field Office Director also noted the applicant was inadmissible pursuant to section 212(a)(9)(C) of the Act, for which there is no waiver. He is the son of a U.S. citizen. He seeks a waiver of inadmissibility pursuant to sections 212(h) and (i) of the Act, 8 U.S.C. §§ 1182(h), (i).

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen mother, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on June 17, 2009. The AAO found that the applicant's appeal was not timely filed and rejected the application. *AAO Decision*, dated February 25, 2011.

On page 1 of the Form I-290B Notice of Appeal or Motion filed in response to the AAO dismissal, counsel for the applicant checked the box which indicates, "I am filing an appeal. My brief and/or additional evidence is attached." *Form I-290B*, signed July 13, 2009. As explained on the cover sheet for the AAO decision of June 17, 2009, an applicant who believes the AAO incorrectly applied the law or who wishes to submit additional information may file a motion to reconsider or a motion to reopen. 8 C.F.R. § 103.5(a)(1)(ii). There is nothing in the regulations allowing for an administrative appeal of an AAO decision.

Nonetheless, as it is clear that counsel was attempting to file a motion in response to the AAO's dismissals, it will consider the statement submitted on the Form I-290B as a motion to reopen and reconsider.

Counsel asserts that the applicant properly mailed the appeal on July 18, 2009, via Fedex Overnight Priority, and that the appeal would have been received on Saturday, July 19, 2009. Counsel infers that USCIS did in fact receive the appeal in a timely manner and submits a copy of the Fedex airbill filled out by the applicant.

An examination of the airbill reveals a hand-written date of request, but does not bear any official receipt markings. Thus, although it is a copy of a filled out airbill, it is not conclusive that this airbill was delivered on the date it was filled out or that the applicant's appeal was timely received. An examination of the envelope in which the applicant's appeal was received reveals a FedEx processing sticker indicating that the airbill request was processed on July 20, 2009, and set for a delivery date of July 21, 2009. In addition, the AAO notes that if, as asserted by counsel, the applicant had submitted the appeal via FedEx priority overnight on July 18, 2009, a Friday, it would

not have been delivered on Saturday July 19, 2009, because the airbill did not request Saturday delivery. Thus, if it had been mailed on Friday July 18, 2009, it would have been delivered on Monday, July 20, 2009, and would have been considered timely.

As the evidence in the record suggests that the applicant's appeal was not mailed until the 33rd day, and was not received until the 34th day, the AAO finds no basis to disturb its conclusion that the appeal was not timely filed. As such, the AAO will affirm its prior decision.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the prior decision of the AAO will be affirmed.

ORDER: The motion is granted, the prior decision of the AAO is affirmed, and the appeal remains rejected.