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



U.S. Citizenship
and Immigration
Services

Date **MAY 30 2013** Office: ATLANTA, GA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

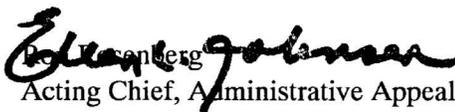
APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

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,


Elizabeth J. Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Atlanta, Georgia, and the subsequent appeal was summarily dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on appeal. As noted below, there is no appeal of an AAO decision, therefore the Form I-290B Notice of Appeal or Motion (Form I-290B) submitted in response to the AAO decision will be treated as a motion. The motion will be rejected as untimely filed.

On page 1 of the Form I-290B filed in response to the AAO dismissal, counsel for the applicant checked the box which indicates, "I am filing an appeal. No supplemental brief and/or additional evidence will be submitted." *Form I-290B*, received March 7, 2013. As explained on the cover sheet for the AAO decision of July 26, 2012, 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. Consequently, although an applicant may file a motion to reopen or a motion to reconsider an AAO decision pursuant to 8 C.F.R. §103.5, there is no appeal of that decision.

The regulation at 8 C.F.R. § 103.5(a) states that any motion to reopen and/or reconsider a proceeding before the service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen and/ reconsider, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that a delay was reasonable and was beyond the control of the applicant or petitioner.

The record indicates that the AAO issued its decision on July 26, 2012. The AAO properly gave notice to the applicant that he had 30 days to file a motion. The Form I-290B was not postmarked until February 28, 2013, and it was not received until March 7, 2013, 224 days after the decision was issued. Accordingly, the Form I-290B was untimely filed. There is no indication that failure to file within the time allotted was reasonable and was beyond the control of the applicant. The AAO therefore declines to exercise discretion and excuse the applicant's failure to file within 30 days of the decision pursuant to 8 C.F.R. §103.5(a)(1)(i).

Lastly, the AAO notes that even if the Form I-290B was properly marked as a motion and timely filed, it would have to be dismissed. 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 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 Service policy. A motion to reconsider a decision on an application or petition must, when filed, also 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). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On the Form I-290B, counsel indicates that the denial of the waiver was based on an incorrect application of the law which deserves additional appellate review. *Statement on Form I-290B, Notice of Appeal or Motion*, received March 7, 2013. No additional statements were made regarding the AAO dismissal of the applicant's appeal of the denial of the Form I-601 waiver application. As

such, the AAO finds the submitted Form I-290B fails to meet the definition of either a motion to reopen or reconsider.

Therefore, even if the Form I-290B were accepted as properly and timely filed, which it was not, it would be found not to meet the definition of a motion.

ORDER: The motion is rejected as untimely filed.