

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

#4

[REDACTED]

FILE:

[REDACTED]

Office: SANTA ANA, CALIFORNIA

Date: OCT 03 2008

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Permission to Reapply for Admission into the United States after  
Deportation or Removal under Section 212(a)(9)(A) of the Immigration and  
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application for permission to reapply for admission after removal was denied by the Field Office District Director, Santa Ana, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed. The AAO will return the matter to the Field Office Director for treatment as a motion to reopen.

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 after 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 August 14, 2007. It is noted that the Field Office Director properly gave notice to the applicant that he had 33 days to file his appeal. On September 14, 2007, the applicant submitted his appeal to the Laguna Nigel office. On September 17, 2007, the applicant's appeal was returned to the applicant, with instructions to submit the appeal to the District Office that rendered the decision on his case. On or about October 10, 2007, the applicant submitted his appeal to the Santa Ana office. On October 12, 2007, the Field Office Director returned the applicant's appeal to the applicant, with instructions to file the appeal in Chicago, Illinois. Counsel states that the appeal was initially sent to Laguna Nigel because that was the office that handled the file previously. *See attachment to Form I-290B*, filed October 24, 2007. However, the AAO notes that even if Laguna Nigel had handled the applicant's case previously, the Field Office Director's denial clearly states that the appeal was to be sent to Chicago, Illinois. Although the applicant dated the appeal September 6, 2007, the Field Office Director received it on October 24, 2007, 71 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO or the Director the authority to extend the 33-day time limit for filing an appeal. The regulation at 8 C.F.R. § 103.2(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, 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 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).

Here, the untimely appeal meets the requirements of a motion to reopen based on counsel's brief and the applicant's declaration explaining the hardships that his United States citizen children would suffer if he was removed from the United States. 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. *See* 8 C.F.R. § 103.5(a)(1)(ii).

Therefore, the Field Office Director must consider the untimely appeal as a motion to reopen and render a new decision accordingly.

**ORDER:** The appeal is rejected. The matter is returned to the Field Office Director for treatment as a motion and the issuance of a new decision.