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U.S. Citizenship  
and Immigration  
Services

H4

FILE: [REDACTED]  
SDO 2005 549 007

Office: MEXICO CITY(SANTA DOMINGO) Date: **FEB 09 2009**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v), of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the district Director, Mexico City and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

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 of 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 District Director issued the decision on July 14, 2006. It is noted that the District Director properly gave notice to the applicant that she had 33 days to file the appeal. The appeal was received by the District Director on October 18, 2006, which is 96 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Immigration and Nationality Act (the Act) nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. The regulation at 8 C.F.R. § 103.3(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).

In the appeal dated October 6, 2006, counsel asserts that family separation must be considered in the hardship assessment, and cites to *Salcido-Salcido v. INS*, 138 F.3d 1292 (9<sup>th</sup> Cir. 1998) and *Arrozal v. INS*, 159 F.3d 429 (9<sup>th</sup> Cir. 1998) as standing for this proposition. Counsel states that failure to consider the cumulative effect of all relevant hardship facts, such as the existence of a U.S. citizen child and his or her lack of knowledge of the country's language, and the minimal economic opportunities for suitable employment in an underdeveloped country, is abuse of discretion, as stated in *Prapavat v. INS*, 662 F.2d 561 (9<sup>th</sup> Cir. 1981). Counsel claims that the applicant's U.S. citizen child will not be able to adjust to Grenada's culture and school system, and that there is no economic opportunity for suitable employment in Grenada, which factors, counsel asserts, were not considered in determining hardship.

Counsel does not indicate any new facts that will be proven supported by affidavits or other documentary evidence, as required in a motion to reopen. Although counsel claims that the

District Director did not consider the hardship of family separation, employment opportunities in Grenada, adjustment to Grenada's culture, and the existence of a U.S. citizen child, the AAO finds that the District Director had considered economic hardship, and the existence of the applicant's U.S. citizen child and the impact of living in Grenada upon the child, and found that these factors were not sufficient to establish extreme hardship to the applicant's qualifying relative. Thus, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

As the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

**ORDER:** The appeal is rejected.