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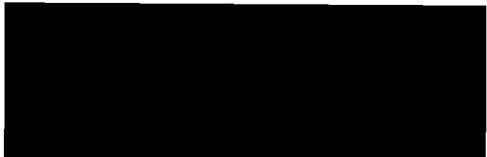
U.S. Department of Homeland Security
20 Mass, Rm. 3000,
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: JAN 28 2009

RELATE)

IN RE:



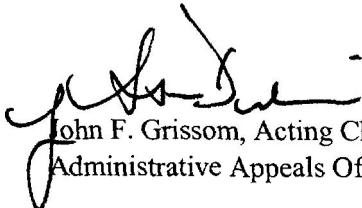
APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

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, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Administrative Appeals Office (AAO), dismissed the appeal of the waiver application. The matter is now before the AAO on a motion to reconsider. The motion to reconsider will be dismissed.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the motion to reopen 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 record indicates that the AAO issued the decision on December 17, 2007. On January 18, 2008, counsel incorrectly filed the appeal with the AAO. A motion is not properly filed until the office, which originally decided the case, in this case, the Vermont Service Center, receives it. On January 18, 2008, the AAO returned the appeal to counsel and informed him that he had incorrectly filed the motion with this office. U.S. Citizenship and Immigration Services (USCIS) received the motion on January 25, 2008, or 39 days after the decision was issued. Accordingly, the motion was untimely filed.

Counsel requests *nunc pro tunc* processing of the applicant's motion to reconsider because he mistakenly filed the appeal with this office. Counsel states that he filed the appeal with this office because the instructions on Form I-290B indicated that an appeal should be filed with the office which made the unfavorable decision. However, the AAO's decision properly notified counsel that the applicant's case materials were returned to the Vermont Service Center and that all further inquiries would need to be made to that office. Furthermore, neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO or the service center director authority to extend the 33-day time limit for filing a motion. As the motion was untimely filed, the motion must be rejected.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states that failure to file within the 30 days (33 days if mailed) of the decision that the motion seeks to reopen may be excused where it is demonstrated that the delay was reasonable and was beyond the control of the applicant. Counsel's above explanation for failure to timely file the motion fails to provide a reasonable excuse as to why the motion was not filed correctly within 33 days of the mailing of the decision.

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

ORDER: The motion is dismissed.