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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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H4

FILE:



Office: HARLINGEN, TX

Date:

SEP 13 2010

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:

Self-represented

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew,  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Harlingen, Texas, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record reflects that, on October 22, 2009, the field office director found that the applicant was inadmissible to the United States pursuant to section 212(a)(6)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(6)(C)(ii), for making a false claim to U.S. citizenship. The field office director determined that there is no waiver for this ground of inadmissibility and that no purpose would be served in adjudicating the application for permission to reapply for admission. The field office director denied the Form I-212 accordingly. *Decision of the Field Office Director*, dated October 22, 2009.

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a U.S. Citizenship and Immigration Services (USCIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office. 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 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).

As stated above, the record indicates that the field office director issued the decision on October 22, 2009. The applicant incorrectly filed the appeal with the AAO on December 2, 2009. An appeal is not properly filed until the field office receives it. The AAO returned the appeal to the applicant and informed him that he had incorrectly filed the appeal with this office. According to the date stamp on the Form I-290B Notice of Appeal, it was received by USCIS on December 17, 2009, or 56 days after the decision was issued. Accordingly, the appeal was untimely filed.

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. An untimely-filed appeal must meet specific requirements to be treated as a motion. The regulation at 8 C.F.R. § 103.5(a)(2) requires that a motion to reopen state the new facts to be provided in the reopened proceeding, supported by affidavits or other documentary evidence. Furthermore, 8 C.F.R. § 103.5(a)(3) requires that 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 USCIS policy.

Review of the record indicates that the appeal does not meet the requirements of either a motion to reopen or reconsider. On appeal, the applicant fails to identify either on the Form I-290B or through submission of a brief or evidence any erroneous conclusion of law or statement of fact made by the field office director.<sup>1</sup>

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<sup>1</sup> We note that, even if the appeal had been timely filed, it would have been summarily dismissed pursuant to 8 C.F.R. § 103.3(a)(1)(v).

As the appeal was untimely filed and the applicant has failed to provide any new facts or evidence that support a motion to reopen or reconsider, the appeal must be rejected.

**ORDER:** The appeal is rejected.