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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

**PUBLIC COPY**

H4

FILE:

Office: LOS ANGELES, CA

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 Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Field Office Director, Los Angeles, California. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider.<sup>1</sup> The motion to reconsider will be dismissed. The application will be denied.

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 October 20, 2009. The applicant incorrectly filed the appeal with the AAO on November 18, 2009. An appeal is not properly filed until the field office receives it. The AAO returned the appeal to the applicant and informed her that she had incorrectly filed the appeal with this office. On December 1, 2009, or 42 days after the decision was issued, U.S. Citizenship and Immigration Services (USCIS) received the motion. Accordingly, the motion was untimely filed.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states that failure to file within the 30 days 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. The applicant fails to provide *any* explanation as to why she did not file the motion within 30 days of the issuance of the decision with the field office despite the explicit instructions on the AAO's decision that any motions should be filed with field office. *See AAO's Decision*, dated October 20, 2009. As the motion was untimely filed it must be dismissed pursuant to 8 C.F.R. § 103.5(a)(4) for failing to meet applicable requirements.

**ORDER:** The motion is dismissed and the application is denied.

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<sup>1</sup> The AAO notes that the applicant indicates that she is filing an appeal of the AAO's dismissal of the appeal of the denial of the Form I-212. An applicant may not file an appeal in a case in which the AAO dismissed a prior appeal; however, an applicant may file a motion to reopen or motion to reconsider. As such, the AAO will view the Form I-290B submitted by the applicant as a motion to reopen or reconsider.