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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[Redacted]

MAR 10 2011

FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: [Redacted]

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:

[Redacted]

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 \$630. 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 Director, California Service Center denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) and a subsequent appeal and motion were dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a second motion to reopen. The motion to reopen will be dismissed. The application will remain 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 its decision on August 10, 2010. The applicant incorrectly filed the motion with the AAO on December 8, 2010. A motion is not properly filed until the service center receives it. The AAO returned the motion to the applicant and informed him that he had incorrectly filed the motion with this office. On December 30, 2010, or 142 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. Counsel contends that he originally filed the motion with the AAO since the motion is based on ineffective assistance of counsel.¹ Counsel's explanation is unreasonable, however, because the AAO decision clearly indicated that any further motions or inquiries should be filed with the office that originally decided the application, and the applicant had previously filed a motion with service center seeking to reconsider the AAO's appeal dismissal. Furthermore, even if the AAO had been the proper filing venue, the motion was initially untimely filed with this office.

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.

¹ The AAO notes that counsel's claims of ineffective assistance of prior counsel are based on his contention that prior counsel failed to provide a copy of the applicant's 1991 conviction record; however, the record reflects that the record contained a copy of the 1991 conviction record and the AAO utilized this document in rendering its prior decisions. Furthermore, the motion does not meet the requirements for a finding of ineffective assistance of counsel under *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).