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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

PUBLIC COPY

H4.

[Redacted]

Date:

MAY 02 2011

Office:

[Redacted]

FILE:

[Redacted]

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: 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 \$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 Field Office Director, [REDACTED] 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.

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 appeal on a Notice of Appeal or Motion (Form I-290B) with the appropriate filing fee, which may be accompanied by a brief and/or additional evidence. 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). 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 reflects that, on November 24, 2010, the field office director found that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212 accordingly. *Decision of the Field Office Director*, dated November 24, 2010. It is noted that the field office director properly gave notice to the applicant that she had 30 days to file the appeal (33 days if mailed). On February 8, 2011, the applicant's appeal letter was returned to her indicating that she had failed to file the correct filing fee and had failed to file a Form I-290B. U.S. Citizenship and Immigration Services (USCIS) received the complete appeal on February 22, 2011, or 90 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO or the field office director authority to extend the 33-day time limit for filing an appeal. As the appeal was untimely filed, the appeal must be rejected. Nevertheless, 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).

Here, the untimely appeal does not meet the requirements of a motion to reopen because the Form I-212 is improperly filed since the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of material facts in order to obtain a visa and enter into the United States.¹ To seek a waiver of this ground of inadmissibility under

¹ The AAO finds that the applicant misrepresented material facts when she applied for and obtained U.S. nonimmigrant visas and sought admission to the United States utilizing the fraudulently obtained nonimmigrant visa while having immigrant intent. The record clearly reflects that the applicant, on multiple occasions, hid her immigrant intent by failing to admit that she was separated from her now ex-spouse, was visiting her boyfriend/fiancé in the United States and that she intended to marry her U.S. citizen boyfriend/fiancé. The record clearly reflects that the applicant continued to

section 212(i) of the Act, 8 U.S.C. § 1182(i), an applicant must file an Application for Waiver of Grounds of Inadmissibility (Form I-601). The regulation at 8 C.F.R. § 212.2(d) requires an immigrant visa applicant who is outside the United States and requires both a waiver and permission to reapply for admission to simultaneously file the Form I-601 and the Form I-212 with the U.S. Consulate having jurisdiction over the applicant's place of residence. 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.

attempt to conceal her prior misrepresentations, her relationship and her intent to enter the United States as an immigrant on multiple occasions in seeking an additional nonimmigrant visa and entry into the United States after the initial nonimmigrant visa was cancelled.