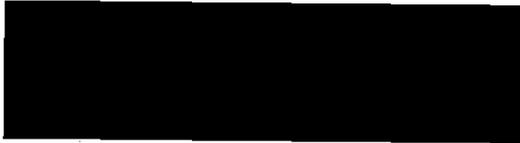


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**U.S. Citizenship
and Immigration
Services**



H4

DATE: JUL 05 2012

OFFICE: SAN DIEGO, CA

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.

Thank you,

George Perry

Perry R. Lew
Chief, Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission into the United States was denied by the District Director, San Diego, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that an affected party must file a complete appeal within 30 days after service of an unfavorable decision. If the decision is mailed, the 30-day period for submitting an appeal begins 3 days after it is mailed. 8 C.F.R. § 103.8(b). The date of filing is the date of actual receipt of the appeal, not the date of mailing. *See* 8 C.F.R. § 103.2(a)(7)(i). The appeal is properly filed when it is stamped to reflect the time and date of actual receipt, it is properly signed and executed, and the required filing fee is attached or a waiver of the filing fee is granted. *Id.*

The record reflects that on July 12, 2010, the District Director sent the decision to the applicant at the applicant's address of record. It is noted that the District Director stated that the applicant had 33 days to file an appeal. The appeal, therefore, was due on August 14, 2010, a Saturday. A U.S. Citizenship and Immigration Services (USCIS) San Diego office date stamp reflects the Form I-290B, Notice of Appeal or Motion, was received on August 16, 2010, the first Monday after the 33-day period. The record, however, reflects another date stamp and a receipt reflecting fee payment for Form I-290B at the USCIS Chula Vista office on October 6, 2010, 86 days after the decision was issued. The record lacks evidence that the required filing fee was attached or waived with the Form I-290B that was received by USCIS San Diego in August. The evidence indicates instead that the applicant paid the appeal fee in October, nearly two months later. Therefore, the appeal was untimely filed and must be rejected.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the time limit for filing an appeal. However, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) provides that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. § 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3), 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: (1) 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; and (2) 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).

The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the District Director of the San Diego, California District Office. *See* 8 C.F.R. § 103.5(a)(1)(i). The matter will therefore be returned to the District Director. If the District Director determines that the late appeal meets the requirements of a motion, the motion shall be granted and a new decision will be issued.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.