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**U.S. Citizenship  
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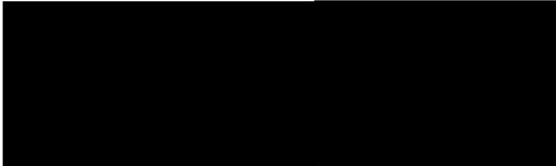
DATE: JUL 20 2012

OFFICE: HOUSTON, TX

FILE: 

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:  


**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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application for permission to reapply for admission into the United States was denied by the Field Office Director, Houston, Texas. 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 was mailed, the appeal must be filed within 33 days. *See* 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 record reflects that on December 16, 2011, the Field Office Director sent the decision to the applicant at the applicant's address of record. It is noted that the Field Office Director stated that the applicant had 33 days to file an appeal and specifically indicated to which address to send the appeal. The appeal, therefore, was due on January 18, 2012. The record reflects that the appeal initially was mailed to the AAO and received on January 25, 2012, though the Houston Field Office is the office that originally decided this case. Although counsel dated the appeal January 17, 2012, the appeal was not received by the field office until February 1, 2012, 47 days after the decision was issued. 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. *See* 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. *See* 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 Field Office Director of the Houston Field Office, Texas. *See* 8 C.F.R. § 103.5(a)(1)(ii). The matter will therefore be returned to the field office director. If the field office 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.