

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **DEC 05 2013** Office: [REDACTED]

FILE [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Admissibility Review Office, Herndon, Virginia, denied the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212), and 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 record reflects that the director issued the decision on July 2, 2013. The decision states that the applicant had 30 days of the date the notice was served to file an appeal. The record shows that the Form I-290B, Notice of Appeal, and filing fee were not mailed until August 5, 2013, thirty-five days later. The appeal was not properly filed until August 13, 2013. 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.

The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Director, Admissibility Review Office, Herndon, Virginia. See 8 C.F.R. § 103.5(a)(1)(ii). The record reflects that the Director reviewed the late appeal but decided not to treat it as a motion.

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

ORDER: The appeal is rejected.