



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF F-J-M-R-

DATE: MAY 16, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM I-212, APPLICATION FOR PERMISSION TO REAPPLY FOR
ADMISSION INTO THE UNITED STATES AFTER DEPORTATION OR
REMOVAL

The Applicant, a native and citizen of Mexico, was found inadmissible for entering the United States without being admitted after having been ordered removed from the United States and seeks permission to reapply for admission into the United States. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(C)(ii), 8 U.S.C. § 1182(a)(9)(C)(ii). For those inadmissible on this ground who seek admission after residing abroad for 10 years following their last departure, U.S. Citizenship and Immigration Services (USCIS) may remove the inadmissibility bar by granting permission to reapply in the exercise of discretion.

The District Director, San Diego, California, denied the application. The Director concluded that the Applicant was inadmissible under section 212(a)(9)(C)(i)(II) of the Act for reentering the United States without inspection after having been removed. We dismissed the subsequent appeal on January 30, 2013, and we denied four subsequent motions to reopen and reconsider on September 6, 2013; February 3, 2014; December 1, 2014; and October 27, 2015.

On January 7, 2016, the Applicant filed the present motion reopen and reconsider, stating the decision was received late by Counsel's office.

We will deny the motion as untimely filed.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) requires that a motion to reopen or reconsider a proceeding must be filed within 30 days of the underlying decision. Failure to file a motion to reopen during this period may be excused when the applicant has demonstrated that the delay was reasonable and beyond the control of the applicant. The regulations do not provide an exception for untimely motions to reconsider.

Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, three days shall be added to the prescribed period. Service by mail is complete upon mailing. 8 C.F.R. § 103.8(b). Pursuant to 8 C.F.R. § 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

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We rendered our decision on October 27, 2015. The motion was received on January 7, 2016, 72 days after the date of our decision. The Applicant initially submitted his motion on December 17, 2015, but the filing was not complete until he paid the requisite fee on January 7, 2016. However, this earlier filing attempt was still untimely, as it was received 51 days after the decision was issued. The Applicant has not demonstrated that the delay was reasonable and beyond his control. Although the Applicant asserts that the decision was received late, no evidence or specific information was submitted to substantiate his claim. Therefore, the motion is untimely.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. That burden has not been met since the motion was not filed within the allotted time period.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of F-J-M-R-*, ID# 17610 (AAO May 16, 2016)