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



U.S. Citizenship  
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Services

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[Redacted]

HS

FILE:

[Redacted]

Office: PHILADELPHIA, PA  
[consolidated therein]

Date:

**MAR 10 2010**

IN RE:

Applicant:

[Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rife

Chief, Administrative Appeals Office

**DISCUSSION:** The Acting District Director, Philadelphia, Pennsylvania, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), and the matter is now before the Administrative Appeals Office (AAO). The appeal will be rejected as untimely filed. The matter will be returned to the Acting District Director for consideration as a motion to reopen and the issuance of a new decision.

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 after 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 indicates that the Acting District Director issued the decision on March 9, 2006. It is noted that the Acting District Director properly gave notice to the applicant that she had 30 days to file her appeal. The Acting District Director's denial clearly stated that the appeal was not to be sent directly to the AAO. On April 7, 2006, the applicant, through counsel, submitted her appeal to the AAO. Accordingly, the applicant's appeal was not properly received by United States Citizenship and Immigration Services (USCIS) until May 9, 2006, 61 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO or the Acting District Director the authority to extend the 33-day time limit for filing an appeal. The regulation at 8 C.F.R. § 103.2(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).

On appeal, the applicant, through counsel, submits a brief; medical documentation regarding her health; and statements from her family.

Here, the untimely appeal meets the requirements of a motion to reopen. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case

the Acting District Director. *See* 8 C.F.R. § 103.5(a)(1)(ii). Therefore, the Acting District Director must consider the untimely appeal as a motion to reopen and render a new decision accordingly.<sup>1</sup>

**ORDER:** The appeal is rejected. The matter is returned to the Acting District Director for consideration as a motion to reopen and the issuance of a new decision.

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<sup>1</sup> The AAO notes that the counsel's brief states that the applicant and her husband have divorced. If the applicant and her husband have divorced, there is no underlying Form I-130 for her adjustment and waiver applications and her appeal of the Acting District Director's denial must be dismissed as the underlying applications are moot.