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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
and Immigration
Services

PUBLIC COPY

[REDACTED]

H5

FILE: [REDACTED] Office: JACKSONVILLE, FLORIDA Date:

MAY 28 2010

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:

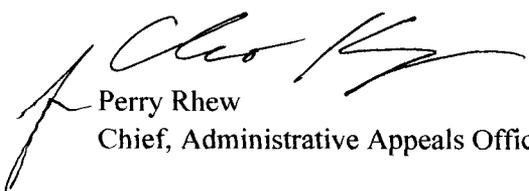
[REDACTED]

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Jacksonville, Florida. The Administrative Appeals Office (AAO) rejected a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed as untimely filed.

A motion to reconsider a decision made by U.S. Citizenship and Immigration Services (USCIS) must be filed within 30 days of the adverse decision. 8 C.F.R. § 103.5(a)(1)(i). If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). A motion to reconsider a decision on an application or petition 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 USCIS policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider also must establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On August 10, 2007, the AAO rejected the applicant's appeal as improperly filed. *See August 10, 2007 Decision of the AAO.* The applicant's motion was filed on October 12, 2007, which was 63 days after the AAO's prior decision was issued. *See Form I-290B, Notice of Appeal or Motion.* Accordingly, the motion to reconsider was untimely filed and must be dismissed.

Even if counsel's submission had been timely filed, it would not meet the requirements for a motion to reconsider. Specifically, counsel claims that she "believed that the Application for Wavier was be[ing] processed" because she received correspondence from the Executive Office for Immigration Review indicating that the appeal must be filed with the appropriate USCIS Office, and that USCIS "will forward the complete record of proceedings to the Board when the record is ready." *See Statement in Support of Motion to Reconsider.* Counsel also states that "it is important to mention that the EOIR 29 [Notice of Appeal to the Board of Immigration Appeals from a Decision of an INS Officer] was included in the original package." *Id.*

The regulations provide instructions for appealing decisions under the appellate jurisdiction of the AAO. Specifically,

[t]he affected party shall file an appeal on Form I-290B. Except as otherwise provided in this chapter, the affected party must pay the fee required by § 103.7 of this part. The affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.

8 C.F.R. § 103.3(a)(2)(i). Additionally, the Officer in Charge notified the applicant of her right of appeal to the AAO by filing Form I-290B with the USCIS office in Jacksonville, Florida. *See Decision of the Officer in Charge*, dated Nov. 25, 2005. Consequently, the applicant has not established that the AAO incorrectly applied the law or USCIS policy in rejecting her appeal and the motion to reconsider will be dismissed for this additional reason. 8 C.F.R. § 103.5(a)(3),(4).

ORDER: The motion to reconsider is dismissed.