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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

H3-

FILE:

[REDACTED]

Office: SACRAMENTO, CALIFORNIA

Date: **OCT 01 2010**

IN RE:

[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:

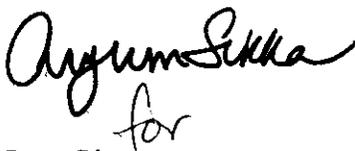
[REDACTED]

INSTRUCTIONS:

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 Field Office Director, Sacramento, California, denied the application for waiver of inadmissibility, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely.

The record reflects that the applicant is a native and citizen of the Philippines. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C). The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

Upon review, the record reflects that the applicant paid an incorrect fee when filing the Form I-290B, while the correct filing fee is \$585, as provided in 8 C.F.R. § 103.7.

The AAO observes that, on the first page of his decision to deny the waiver application, dated May 23, 2008, the Field Office Director stated that the fee for filing an appeal is \$545. The record indicates that on June 24, 2008, the Sacramento Field Office rejected the applicant's appeal with a request that the applicant re-file with the appropriate fee. As a consequence, the applicant's appeal was not received until July 9, 2008, 47 days after the denial.

The regulation at 8 C.F.R. § 103.3(a)(2)(i) states: "The 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 AAO lacks discretion to waive the requirement of 8 C.F.R. § 103.3(a)(2)(i) to pay the correct fee provided in 8 C.F.R. § 103.7. Accordingly, the appeal must be rejected as untimely.

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. 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. 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 director of the Sacramento, California Field Office. *See* 8 C.F.R. § 103.5(a)(1)(ii). The Field Office Director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

In this case, the applicant has not asserted any new facts, has not submitted any additional evidence which was not considered by the director, and has not established that the Field Office Director's decision was incorrect based on the evidence in the record at the time of the decision. The untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider.

As the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

**ORDER:** The appeal is rejected.