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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



H5



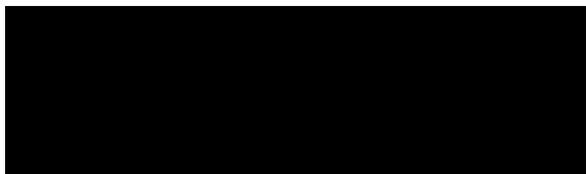
FILE: [REDACTED] Office: VIENNA, AUSTRIA

Date: FEB 28 2011

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v) and Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



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 \$630. 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, Vienna, Austria. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected. The AAO will return the matter to the officer-in-charge for treatment as a motion to reopen and issuance of a new decision on the merits of the case.

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 of 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 officer-in-charge issued the decision on July 6, 2009. The record reflects that the applicant filed the appeal on August 4, 2009, but it was rejected for including an incorrect form of payment. Counsel asserts that 8 C.F.R. § 103.7(a)(2) states that “[r]emittances must be drawn on a bank or other institution located in the United States and be payable in United States currency.” *Counsel’s Letter*, at 1, dated September 2, 2009. Counsel states that there is no requirement that payment of fees be made according to the decision’s instructions. *Id.* Counsel states that even if the decision’s instructions are valid, the instructions were followed as the check submitted was a business check. *Id.* The AAO notes counsel’s claims, however, United States Citizenship and Immigration Services is bound by the Department of State’s instructions on how payment is made as they fee-in the application. The instructions of the officer-in-charge state that payment must be made by “bank or cashier’s check or money order.” The business check submitted does not meet this requirement. The appeal was subsequently filed with a correct form of payment on September 10, 2009, which is 66 days after the denial date. Accordingly, the appeal was untimely filed.

Neither the Act nor the pertinent regulations grant the officer-in-charge or the AAO authority to extend the 33-day time limit for filing an appeal. As the appeal was untimely filed, the appeal must be rejected. Nevertheless, the regulation at 8 C.F.R. § 103.3(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).

The appeal includes, but is not limited to, the applicant’s spouse’s statement; marathon documents for the applicant; the applicant’s statement; a doctor’s letter for the applicant’s spouse; statements from the applicant’s son and sister; country conditions information on Albania; an AAO decision; letters from friends of the applicant and his spouse, and letters from religious figures.

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 officer-in-charge. *See* 8 C.F.R. § 103.5(a)(1)(ii). Therefore, the officer-in-charge must consider the untimely appeal as a motion to reopen and render a new decision accordingly.

**ORDER:** The appeal is rejected. The matter is returned to the officer-in-charge for treatment as a motion to reopen and issuance of a new decision on the merits of the case.