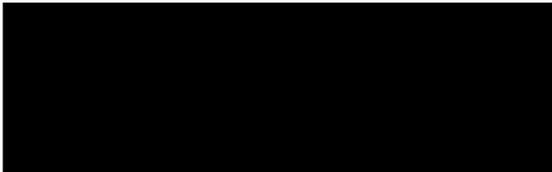


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



PUBLIC COPY



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Date: **MAY 16 2011** Office: BANGKOK, THAILAND

FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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 District Director, Bangkok, Thailand. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed. The AAO will return the matter to the district director for consideration as a motion to reopen.

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 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 district director issued the decision on January 23, 2009. According to the applicant's husband, the applicant did not receive the decision until February 27, 2009, thirty-five days after the date of the decision. *Declaration of Parimal Sardar*, dated March 14, 2009. The record shows that the appeal was not properly filed until March 19, 2009, fifty-five days after the date of the decision. Counsel concedes that the appeal is untimely filed, but requests that the time of appeal be extended in the interests of justice. *Notice of Appeal or Motion (Form I-290B)*, dated March 14, 2009.

Although the AAO is sympathetic to the applicant's circumstances, neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. The AAO notes that the envelope the applicant submitted with her appeal shows a postmark date in India of February 19, 2009. However, the rest of the envelope is illegible and there is no evidence addressing when the decision was served from Bangkok. The regulation at 8 C.F.R. § 103.3(a)(2)(i) makes clear that the pertinent date with which to begin counting days is the date the decision was served. There is no evidence showing that the applicant's appeal was filed within 33 days from the day the decision was served. Therefore, the AAO must reject the appeal as untimely filed.

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 USCIS 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).

Here, counsel has submitted additional new documentary evidence, including a declaration from the applicant's husband and a psychological report, to support the applicant's waiver application. The applicant's submission meets the requirements of a motion to reopen.

Therefore, the district director 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 district director for consideration as a motion to reopen.