



U.S. Citizenship
and Immigration
Services

[REDACTED]

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Date: DEC 07 2012 Office: CHICAGO, ILLINOIS FILE: [REDACTED]

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:

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.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois. An appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion. The motion will be rejected as untimely filed.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that an affected party must file a motion to reopen or reconsider within 30 days of the decision that the motion seeks to reopen or reconsider. If the decision is mailed, the 30-day period begins 3 days after it is mailed. 8 C.F.R. § 103.8(b). The date of filing is the date of actual receipt of the motion, not the date of mailing. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the Field Office Director sent the decision on September 17, 2009, to the applicant at the applicant's address of record. On October 15, 2009, the applicant, through counsel, submitted an appeal to the AAO. On March 26, 2012, the AAO dismissed the applicant's appeal. It is noted that the AAO stated that the specific requirements for filing a motion to reopen or reconsider could be found at 8 C.F.R. § 103.5, the applicant had 30 days to file a motion, all motions must be submitted to the office that originally decided the applicant's case, and any further inquiry must be made to that office, which in this case is the Chicago Field Office. Although the applicant dated the Form I-290B, Notice of Appeal or Motion, on April 25, 2012, the motion was not received until May 7, 2012, 42 days after the decision was issued. Therefore, the motion to reopen and reconsider was untimely filed and must be rejected.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the time limit for filing a motion. However, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the 30 days "may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant."

The AAO notes that the applicant failed to explain the delay in filing her motion. Therefore, the AAO finds that as a matter of discretion, the applicant's failure to file the motion within the period allowed was not reasonable or beyond the control of the applicant. As the motion to reopen and reconsider was untimely filed, it must be rejected.

ORDER: The motion to reopen and reconsider is rejected.