

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



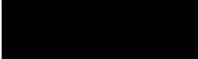
U.S. Citizenship
and Immigration
Services



H5

Date: **DEC 08 2012**

Office: SACRAMENTO

FILE: 

IN RE: Applicant: 

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:



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, Sacramento, California, and the subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be dismissed as untimely filed.

The regulation at 8 C.F.R. § 103.5(a) states that any motion to reopen and/or reconsider a proceeding before the service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen and/ reconsider, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that a delay was reasonable and was beyond the control of the applicant or petitioner.

The record indicates that the AAO issued its decision on January 31, 2011. The AAO properly gave notice to the applicant that he had 30 days to file a motion and that the motion was to be submitted to the office that originally decided the case. Despite this notice, the motion was initially filed with the AAO. The motion was not properly received until April 7, 2011. Accordingly, the motion was untimely filed.^[1]

There is no indication that failure to file within the time allotted was reasonable and was beyond the control of the applicant. The AAO therefore declines to exercise discretion and excuse the applicant's failure to file within 30 days of the decision pursuant to 8 C.F.R. §103.5(a)(1)(i). Accordingly, the motion will be rejected as untimely filed.

ORDER: The motion is rejected as untimely filed.

^[1] In addition, the regulation at 8 C.F.R. §103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 8 C.F.R. § 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." The AAO notes that the instant motion does not contain the statement required by this regulation.