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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**

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DATE: **JUL 18 2012** Office: ACCRA, GHANA 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:

SELF-REPRESENTED

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Accra, Ghana, and 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 Field Office Director for consideration as a motion to reopen and reconsider.

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 after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.8(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 appeal is properly filed when it is stamped to reflect the time and date of actual receipt, it is properly signed and executed, and the required filing fee is attached or a waiver of the filing fee is granted. *Id.*

The record indicates that the Field Office Director issued the decision on March 16, 2011. It is noted that the Field Office Director properly gave notice to the applicant that she had 33 days to file her appeal. Neither the Act nor the pertinent regulations grant the AAO or the Field Office Director the authority to extend the 33-day time limit for filing an appeal.

The Field Office Director instructed the applicant that her appeal filing fee must be paid in U.S. dollars or local currency if filed at the U.S. Embassy, or as a money order for U.S. dollars if filed by express mail. On or about April 11, 2011, the applicant's husband filed the applicant's appeal with a personal check. On April 20, 2011, the Field Office Director returned the applicant's husband's personal check.

Although the Form I-290B, Notice of Appeal or Motion, is dated April 11, 2011, the applicant did not file the appeal with the proper fee until June 6, 2011, 82 days after the decision was issued. The appeal was untimely filed.

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. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Field Office Director of the Accra, Ghana field office. *See* 8 C.F.R. § 103.5(a)(1)(ii).

The matter will therefore be returned to the Field Office Director. If the Field Office Director determines that the late appeal meets the requirements of a motion, the motion shall be granted and a new decision will be issued.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.