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



H5

DATE: **JUN 07 2012**

OFFICE: PHILADELPHIA, PA

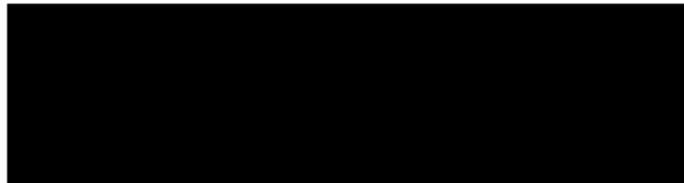


IN RE:



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,

A handwritten signature in black ink that reads "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Philadelphia, Pennsylvania. 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 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 an affected party must file a complete appeal within 30 days after service of an unfavorable decision. If the decision is mailed, the 30-day period for submitting an appeal begins three days after it is mailed. 8 C.F.R. § 103.8(b). The date of filing is the date of actual receipt of the appeal, not the date of mailing. 8 C.F.R. §103.2(a)(7)(i).

The record indicates the director issued the denial decision on March 31, 2010. It is noted that the director properly gave notice to the applicant that he had 33 days to file the appeal. Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit.

Although the applicant dated the Form I-290B appeal April 29, 2010, it was not received by the Philadelphia field office until May 5, 2010, or 35 days after the decision was issued. Accordingly, 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 director of the Philadelphia field office. *See* 8 C.F.R. § 103.5(a)(1)(ii).

The matter will therefore be returned to the director. If the 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.