

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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: **SEP 13 2012**

Office: NEWARK NJ

FILE: 

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,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, New Jersey and the subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion to reopen will be rejected 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 July 1, 2009. The AAO properly gave notice to the applicant that he had 30 days to file a motion. The AAO further noted that all motions, with the requisite filing fee, must be submitted to the office that originally decided the case. Despite the instructions provided, counsel for the applicant sent the appeal directly to the AAO. The AAO received the appeal on July 30, 2009 and returned the appeal as improperly filed. The appeal was received on August 5, 2009, 35 days after the decision was issued. Accordingly, the motion to reopen was untimely filed.

Counsel states that the instant motion should be received *nunc pro tunc*, as the failure to file properly by deadline was not due to the fault of the alien. *See Letter from [REDACTED] Esq.*, dated August 3, 2009. As a matter of discretion, the applicant's failure to file the motion with the requisite filing fee at the office that originally decided the case within the period allowed will not be excused as reasonable as the AAO's decision clearly indicated that a motion must be submitted to the office that originally decided the case. Nor will the applicant's failure to file the motion with the requisite filing fee within the period allowed at the office that originally decided the case be excused based on counsel's assertion that the failure was beyond the control of the applicant, as counsel is acting as the applicant's representative, as evidenced by the Form G-28, Notice of Entry of Appearance, signed by both the applicant and counsel in July 2009. Accordingly, the motion will be rejected as untimely filed.

ORDER: The motion to reopen is rejected as untimely filed.