

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



(b)(6)

[Redacted]

DATE: **APR 30 2013** OFFICE: CALIFORNIA SERVICE CENTER

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be rejected.

In order to properly file a motion to reopen or reconsider, the regulation at 8 C.F.R. § 103.5(a) provides that the affected party or the attorney or representative of record must file the complete motion within 30 days of service of the unfavorable decision. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(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). A failure to file within the period may be excused in the discretion of the Service where it was demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *See* 8 C.F.R. § 103.5(a)(1)(i).

The record indicates that the Chief, Administrative Appeals Office issued the decision on July 28, 2010. It is noted that the AAO properly gave notice to the applicant that it had 30 days to file a motion to reopen.

Counsel dated the Form I-290B, Notice of Appeal or Motion, October 10, 2012, and it was not received by USCIS until November 2, 2013, or 828 days after the decision was issued. Furthermore, the applicant has not demonstrated that the delay was reasonable and beyond her control. Accordingly, the motion was untimely filed.

Counsel notes that the instant motion should be received nunc pro tunc because the AAO's decision on appeal was erroneous. *See Brief in Support*, dated October 10, 2012. The AAO finds no legal error in its decision which would warrant reopening the matter on its own motion. Accordingly, as the motion was untimely filed, it will be rejected.

ORDER: The motion is rejected.