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

U.S. Citizenship and Immigration Services

DATE: DEC 2 4 2013 Office: CIUDAD JUAREZ FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11), section 212(h) of the Act, 8 U.S.C. § 1182(h), and section 212(i) of the Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Ciudad Juarez, Mexico, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

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 3 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. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record reflects that the field office director issued the decision on March 21, 2013. The decision states that the applicant had 30 days of the date the notice was served (33 days if the notice was mailed) to file an appeal. The record shows that the initial Form I-290B, Notice of Appeal, was not filed until April 29, 2013, thirty-nine days later. Although the field office director rejected this appeal due to an unaccepted form of payment, the appeal was also untimely. Therefore, the appeal was untimely filed and must be rejected. The fact that counsel filed a second Form I-290B with the proper form of payment does not change the fact that the initial appeal was not timely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the time limit for filing an appeal. However, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) provides that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. § 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3), 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, Ciudad Juarez. *See* 8 C.F.R. § 103.5(a)(1)(ii). The record reflects that the field office director reviewed the late appeal but decided not to treat it as a motion.

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

**ORDER**: The appeal is rejected.