

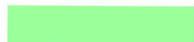


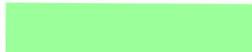
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **FEB 19 2013** OFFICE: PITTSBURGH, PA

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Pittsburgh, Pennsylvania on July 24, 2009. The matter was appealed to the Administrative Appeals Office (AAO), and the AAO dismissed the appeal on January 10, 2012. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be rejected as untimely filed.

The regulations provide at 8 C.F.R. § 103.5(a)(1)(i) that in order to properly file a motion to reopen or reconsider, the affected party must file the motion within 30 days after service of the unfavorable decision. If the decision was mailed, the motion must be filed within 33 days. See 8 C.F.R. § 103.8(b). The date of filing is the date of actual receipt of the motion, not the date of mailing. See 8 C.F.R. § 103.2(a)(7)(i).

In the present case, the AAO issued a decision dismissing the applicant's appeal on January 10, 2012. The AAO decision was mailed to the applicant and his attorney, and it advised the applicant he could file a motion to reopen or reconsider within 30 days of the date of the AAO decision. Counsel and the applicant were further advised that such a motion must be submitted with a completed Form I-290B, Notice of Appeal or Motion (Form I-290B) and payment of fee to the office that originally decided the applicant's case. On February 9, 2012, counsel mailed a Form I-290B with attachments and fee directly to the AAO. The Form I-290B, attachments and fee were returned to counsel on February 10, 2012, because the AAO cannot accept the filing and fee payment for a Form I-290B. Counsel subsequently filed the Form I-290B and fee at the office that originally decided the applicant's case and it was received on February 15, 2012.

Although counsel submitted the applicant's Form I-290B to the AAO within the time frame allowed for filing a motion to reopen or reconsider, the motion was not considered *filed* until counsel submitted the completed Form I-290B with fee to the office that originally issued a decision in the applicant's case. Counsel filed the applicant's Form I-290B with the office that originally issued the applicant's decision on February 15, 2012, thirty-six days after the AAO decision was issued. The motion was therefore untimely filed.

Under 8 C.F.R. § 103.5(a)(1)(i), the failure to timely file a motion to reopen or reconsider may be excused in the discretion of the Service, where it is demonstrated that the delay was reasonable and was beyond the control of the applicant.

Counsel indicates in a letter accompanying the motion to reopen and reconsider that he filed the motion on February 9, 2012 and that it was returned to him. Counsel does not address the failure to timely file the applicant's motion or explain how the failure to timely file the motion was reasonable or beyond the applicant's control.

The record clearly reflects that counsel and the applicant were notified that a motion to reopen or reconsider must be submitted with a completed Form I-290B and payment of fee to the office that originally decided the applicant's case. The AAO therefore determines that the present motion was untimely filed, and that it must be rejected.

It is noted further that the motion to reopen and reconsider does not meet all applicable requirements for filing a motion. The regulation at 8 C.F.R. § 103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has

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been or is the subject of any judicial proceeding.” The current motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). The regulation at 8 C.F.R. §103.5(a)(4) states that a motion that does not meet applicable requirements must be dismissed. Therefore, because the instant motion did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be rejected for this reason.

ORDER: The motion to reopen and reconsider is rejected.