



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[REDACTED]

Date: JAN 16 2013 Office: COLUMBUS, OHIO 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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Columbus, Ohio. An appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion. The motion will be rejected as untimely filed.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that an affected party must file a motion to reopen or reconsider within 30 days of the decision that the motion seeks to reopen or reconsider. If the decision is mailed, the 30-day period 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 motion, not the date of mailing. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the Field Office Director sent the decision on January 25, 2011, to the applicant at the applicant's address of record. On February 24, 2011, the applicant, through counsel, submitted an appeal to the AAO. On January 6, 2012, the AAO dismissed the applicant's appeal. It is noted that the AAO stated that the specific requirements for filing a motion to reopen or reconsider could be found at 8 C.F.R. § 103.5, the applicant had 30 days to file a motion, all motions must be submitted to the office that originally decided the applicant's case, and any further inquiry must be made to that office, which in this case is the Columbus Field Office. On February 6, 2012, the applicant, through counsel, submitted his motion to reopen and reconsider to the AAO, which the AAO returned to the applicant. Although the applicant dated the Form I-290B, Notice of Appeal or Motion, on February 3, 2012, the motion was not received until February 10, 2012, 35 days after the decision was issued. Therefore, the motion to reopen and reconsider was untimely filed and must be rejected.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the time limit for filing a motion. However, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the 30 days "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."

In a letter dated February 3, 2012, counsel claims that the delay in filing the motion to reopen and reconsider was "beyond [the applicant's] control" because counsel's new intern "mistakenly submitted" the motion to the AAO. The AAO notes that the cover sheet on the AAO's decision clearly states the requirements for filing a motion and references the specific regulation that outlines these requirements. The AAO finds that the applicant has not demonstrated that this delay was beyond his control. As the motion to reopen and reconsider was untimely filed, the motion to reopen and reconsider must be rejected.

**ORDER:** The motion to reopen and reconsider is rejected.