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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**



H6

FILE:



Office:



Date: APR 04 2011

IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)(v).

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Francisco, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The applicant is a native and citizen of [REDACTED]. She was found to be inadmissible to the United States pursuant to section 212(a)(9)(C)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i)(II), for having been unlawfully present in the United States over one year and seeking admission within ten years of her last departure. She is married to a Lawful Permanent Resident of the United States and has three U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The Field Office Director concluded that the applicant's underlying Form I-485 application was denied due to the applicant's failure to establish that she qualifies for the exception listed at section 212(a)(9)(C)(iii) and thus the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601) was moot. *Decision of the Field Office Director*, June 19, 2009.

The record indicates that the Field Office Director issued the decision on June 19, 2009. It is noted that the Field Office Director properly gave notice to the applicant that she had 33 days to file the appeal. A properly filed Form I-290B, Notice of Appeal to the Administrative Appeals Office was not received by U.S. Citizenship and Immigration Services (USCIS) until July 24, 2009, 35 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33 day time limit for filing an appeal. As the appeal was untimely filed, the appeal must be rejected. Nevertheless, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The Field Office Director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

On appeal counsel for the applicant asserts that the Field Office Director's decision was in error but has not articulated any new facts or submitted any new evidence on appeal to support this assertion.

Here, the untimely appeal does not meet the requirements of a motion to reopen. As such, the appeal will be rejected as untimely.

ORDER: The appeal is rejected.