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



**U.S. Citizenship  
and Immigration  
Services**

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FILE: [REDACTED] Office: PHOENIX, ARIZONA Date: **MAR 08 2011**

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Thank you,

*Michael Humway*

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Mexico City, Mexico, and by the Administrative Appeals Office (AAO) on appeal. The motion will be rejected as untimely filed.<sup>1</sup>

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a) provides that the affected party must file the complete motion within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal 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).

The record indicates that the AAO issued the decision on January 7, 2009. It is noted that the AAO properly gave notice to the applicant that she had 33 days to file the motion, and that the motion was to be filed with the office that originally decided the case, which in the applicant's case is the Phoenix District Office. The motion dated February 6, 2009 was received by the Phoenix District Office on March 11, 2009, 63 days after the decision was issued. Accordingly, the motion was untimely filed.

The regulation at 8 C.F.R. § 103.5(a)(1) states that failure to file a timely motion may be excused where it is demonstrated that the delay was reasonable and was beyond the control of the applicant. Though the applicant indicates that he received the AAO's decision one week before the expiration of the 33 days to file the motion, the record shows that the AAO's decision was mailed to the applicant's proper address. Furthermore, the record shows that the applicant erroneously filed the motion with the AAO on February 19, 2009, which was returned to the applicant on February 20, 2009. The Phoenix District Office received the applicant's motion on February 6, 2009, which, as previously stated, is 63 days after the AAO's decision was issued. Thus, based on the record, we find that the applicant fails to demonstrate that his failure to file a timely motion was reasonable and beyond his control.

As the motion was untimely filed it must be rejected.

**ORDER:** The motion is rejected.

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<sup>1</sup> The applicant indicates on the Form I-290B, Notice of Appeal or Motion, that she is filing an appeal. However, since the Form I-290B relates to the AAO's decision, we will treat the applicant's Form I-290B appeal as a motion to reconsider or a motion to reopen.