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



H6

DATE: **APR 26 2012**

OFFICE: LIMA, PERU

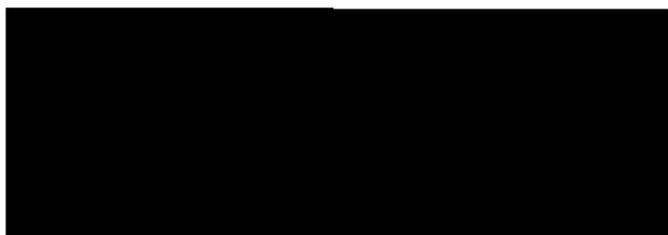


IN RE:



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:



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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Inadmissibility (Form I-601) was denied by the Field Office Director, Lima, Peru. 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 three days after it is mailed. 8 C.F.R. § 103.8(b). The Form I-290B notice of appeal or motion is not considered filed until a completed Form I-290B with fee is submitted to the office that originally issued a decision in the applicant's case. 8 C.F.R. §103.3(a)(2)(i). The date of filing is the actual date of receipt of the appeal, not the date of mailing. 8 C.F.R. §103.2(a)(7)(i).

In the present matter, the director sent the denial decision to the applicant and the applicant's attorney of record on October 26, 2009. The decision informed the applicant that an appeal must be filed within 30 days (33 days if the notice was mailed), and that, "[i]f an appeal is desired, the Notice of Appeal is filed with a required fee of \$585.00." On November 27, 2009, thirty-three days after the issuance of the denial decision, counsel submitted a Form I-290B with an incorrect fee in the amount of \$545.00. The Form I-290B was rejected by the Lima, Peru office, based on the applicant's failure to submit the correct filing fee pursuant to 8 C.F.R. § 103.2(a)(7)(i), which provides that a benefit request which is not submitted with the correct fee shall be rejected.

The Field Office Director sent the notice of rejection to the applicant and the applicant's attorney of record on January 4, 2010, and notified the applicant that although he could re-submit the Form I-290B with proper payment, the submission would be considered untimely filed because more than thirty-three days had passed since the denial decision was issued. The director further notified the applicant that an untimely appeal must be reviewed to determine if it meets the requirements of a motion to reopen or reconsider. On March 3, 2010 (129 days after the director issued a decision in the applicant's case), counsel filed a Form I-290B appeal with proper fee on the applicant's behalf. Because the appeal was filed more than thirty-three days after the issuance of the denial decision, the appeal is untimely filed.

Neither the Act nor the 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.

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 to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the director of the Lima, Peru, field office. See 8 C.F.R. § 103.5(a)(1)(ii).

Counsel states in the Form I-290B filed on March 3, 2010, that the failure to file the correct filing fee was an unintentional error on the part of the applicant's wife, and the result of stress related to a fire at her rental property, the subsequent eviction of her tenant, and loss of her sole source of income. To support her assertions, counsel submits home-insurance documentation establishing a fire occurred at the applicant's wife's property on September 25, 2009, and court documents establishing that eviction proceedings were initiated on October 1, 2009.

A memorandum to the file reflects the director reviewed the Form I-290B and evidence submitted by counsel on March 3, 2010, but found no evidence to establish the untimely filed appeal met the requirements of a motion to reopen or reconsider.

The AAO agrees that the evidence submitted on appeal fails to meet the requirements of a motion to reconsider or motion to reopen, in that it fails to establish the decision was based on an incorrect application of law or USCIS policy, or that the decision was incorrect based on the evidence of record at the time of the initial decision. As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.