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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: AUG 24 2012

OFFICE: DURHAM, NORTH CAROLINA

File: 

IN RE:

Applicant: 

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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A large, stylized handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Durham, North Carolina and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her departure from the United States. The applicant seeks a waiver of inadmissibility in order to remain in the United States with her U.S. citizen spouse and children, one of whom is a minor born in 2001.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated September 21, 2011.

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 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 appeal, not the date of mailing. *See* 8 C.F.R. § 103.2(a)(7)(i). A complete appeal must include payment of the filing fee when the application is filed. *See* 8 C.F.R. § 103.2(e).

The record reflects that the field office director sent the decision on September 21, 2011 to the applicant at the applicant's address of record. It is noted that the field office director stated that the applicant had thirty-three (33) days to file an appeal. Although the applicant dated the appeal October 10, 2011, the appeal was not received until October 17, 2011 and was incorrectly submitted to an office that does not accept applications or fees. The applicant was notified thereof on October 19, 2011 and she subsequently mailed the appeal and fee on October 24, 2011, thirty-three (33) days after the decision was issued. The appeal was not received until October 26, 2011, thirty-five (35) days after the decision was issued. Therefore, the appeal 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 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 field office director of the Raleigh-Durham Field Office in Durham, North Carolina. See 8 C.F.R. § 103.5(a)(1)(ii).

The AAO further notes that the applicant makes no assertions on appeal concerning the denial of her waiver application. See *Form I-290B, Notice of Appeal or Motion*, received October 26, 2011.

On the Form I-290B, in Part 2, the applicant indicated by checking box B that a brief and/or evidence would be submitted to this office within 30 days of filing the appeal. No such brief or evidence appears in the record.

8 C.F.R. § 103.3(a)(1)(v) states in pertinent part:

Summary dismissal. An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

The AAO finds that the applicant's appeal fails to identify any erroneous conclusion of law or statement of fact in the field office director's decision. Were the appeal filed within the 33-day time period it would have been summarily dismissed.

**ORDER:** The appeal is rejected.