

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



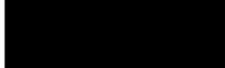
U.S. Citizenship  
and Immigration  
Services



H6

DATE: DEC 20 2012

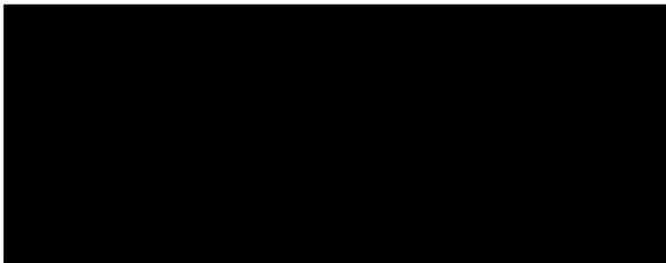
OFFICE: ACCRA, GHANA

FILE: 

IN RE: 

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

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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Officer Director, Accra, Ghana. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be rejected.

The regulation at 8 C.F.R. § 103.5(a) states that any motion to reopen a proceeding before the service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that a delay was reasonable and was beyond the control of the applicant or petitioner.

The record indicates that the AAO issued its decision on February 29, 2012. The AAO properly gave notice to the applicant that she had 30 days to file a motion. As the decision was mailed, the 30-day period for submitting an appeal began 3 days after the decision was mailed. 8 C.F.R. § 103.8(b). The record indicates that the motion to reopen and reconsider was received by the AAO on March 29, 2012, however, the motion was returned to counsel as improperly filed. The motion was then resubmitted by counsel to the proper address, however, past the 33-day period.<sup>1</sup> The applicant has not demonstrated that the delay was reasonable or was beyond their control. 8 C.F.R. § 103.5(a). Counsel states that he was instructed by a customer service officer via the U.S. Citizenship and Immigration Services (USCIS) 800 number to file the motion directly with the AAO. The AAO decision issued on February 29, 2012 makes clear, however, that the motion should be filed with the office that originally issued the decision on the applicant's Form I-601. The form instructions and the USCIS website also make clear that the Form I-290B is not to be filed directly with the AAO.

Accordingly, the motion will be rejected as untimely filed.

**ORDER:** The motion is rejected.

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<sup>1</sup> The AAO also notes that the regulation at 8 C.F.R. §103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 8 C.F.R. § 103.5(a)(1)(iii)(C) requires that motions be "[a]ccompanied by a statement about whether or not the validity of the unfavorable decision has been or is the subject of any judicial proceeding." The AAO notes that the instant motion does not contain the statement required by this regulation.