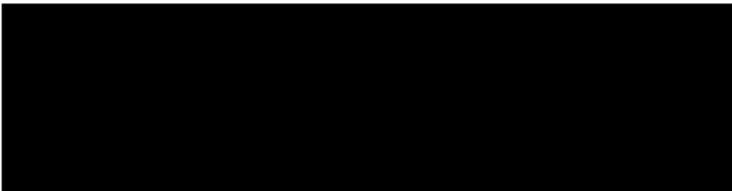


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

H6



DATE: **DEC 26 2012** OFFICE: MEXICO CITY, MEXICO

FILE: 

IN RE: 

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

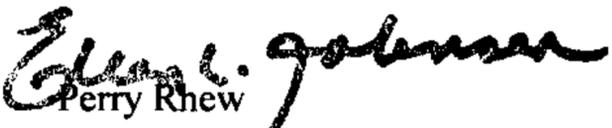
ON BEHALF OF APPLICANT:

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.

Thank you,


Perry Rnew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Mexico City, Mexico, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The AAO's decision is now before the AAO on appeal. The motion will be rejected.

In order to properly file a motion to reopen or reconsider an AAO decision, the regulation at 8 C.F.R. § 103.5(a) provides that the affected party or the attorney or representative of record must file the complete motion within 30 days of service of the unfavorable decision. If the decision was mailed, the motion 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). A failure to file within the period may be excused in the discretion of the Service where it was demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *See* 8 C.F.R. § 103.5(a)(1)(i).

The record indicates that the Chief, Administrative Appeals Office issued the decision on April 3, 2012. It is noted that the AAO properly gave notice to the applicant that she had 30 days to file a motion.

The record reflects that the applicant's spouse dated the Form I-290B on May 12, 2012, 39 days after the AAO decision, and it was not received by the field office until June 18, 2012, or 76 days after the decision was issued. Furthermore, although the spouse indicated he sent the appeal to the Washington D.C. address by mistake, the applicant has not demonstrated that the delay was reasonable and beyond her control. Accordingly, the motion was untimely filed.

Furthermore, on page 1 of the Form I-290B Notice of Appeal or Motion filed in response to the AAO dismissal, the applicant checked the box which indicates, "I am filing an appeal. My brief and/or additional evidence is attached." *Form I-290B*, signed May 12, 2012. As explained on the cover sheet for the AAO decision of April 3, 2012, an applicant who believes the AAO incorrectly applied the law or who wishes to submit additional information may file a motion to reconsider or a motion to reopen. 8 C.F.R. § 103.5(a)(1)(ii). There is nothing in the regulations allowing for an administrative appeal of an AAO decision. Consequently, although an applicant may file a motion to reopen or a motion to reconsider an AAO decision pursuant to 8 C.F.R. §103.5, there is no appeal of that decision. Accordingly, even if the Form I-290B were timely filed, the appeal must be rejected.

As the motion was untimely filed, it must be rejected.

ORDER: The motion is rejected.