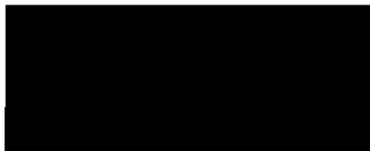


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U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090
**U.S. Citizenship
and Immigration
Services**



H6

DATE: **JUL 12 2012**

OFFICE: NEW DELHI, INDIA

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:



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 Field Office Director, New Delhi, India, denied the waiver application. The applicant, through counsel, appealed the Field Office Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. The applicant motions the AAO to reopen the dismissal of her appeal. The applicant's motion will be rejected as untimely filed.

In order to properly file a motion to reopen, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the motion within 30 days after service of the 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 not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i). In the exercise of discretion, the U.S. Citizenship and Immigration Services (USCIS) may excuse the untimely filing of a motion to reopen if the applicant demonstrates that the delay was reasonable and beyond her control. *See* 8 C.F.R. § 103.5(a)(1)(i).

The record indicates that the AAO issued its decision on March 17, 2011, to the applicant at the applicant's address of record. It is noted that the AAO properly gave notice to the applicant that she had 30 days to file a motion on Form I-290B, Notice of Appeal or Motion (Form I-290B) with the USCIS office that originally decided her case if the applicant disagreed with the AAO's decision or had new information for consideration. Although counsel dated the Form I-290B on April 14, 2011, the motion was received on April 15, 2011, by the AAO; not the office that originally decided the applicant's case. The AAO issued a letter to counsel dated April 18, 2011, indicating the proper office and fee with which to file the motion. The Form I-290B and fee were received by the proper office on April 25, 2011; 40 days after the AAO issued its decision. Therefore, the appeal was untimely filed. The AAO will now determine whether it may, in the exercise of discretion, excuse the untimely filing.

The AAO notes that the record includes correspondence from counsel, indicating that the applicant's motion was being filed with USCIS New Delhi, India at the instruction of the AAO and that the motion was initially filed with the AAO on April 15, 2011. The correspondence also includes a request in the alternative that USCIS New Delhi, India accept the motion "*sua sponte* due to the circumstances of the filing and the information contained in the motion." *Correspondence from Counsel*, dated April 22, 2011. However, the correspondence neither proffers any specific reasons as to why the motion is filed untimely nor makes any assertions of circumstances that were beyond the applicant's control. Accordingly, the AAO will not exercise its discretion and excuse the untimely filing of the applicant's motion.

As the motion to reopen was untimely filed and does not qualify for excusal as a matter of discretion, the appeal must be rejected.

ORDER: The appeal is rejected.