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U.S. Citizenship
and Immigration
Services



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DATE: **JUL 18 2012** OFFICE: MEXICO CITY

FILE: 

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 waiver application was denied by the Field Office Director, Mexico City, Mexico. 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 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).

The record reflects that on February 17, 2011, the Field Office Director sent the decision to the applicant at the applicant's address of record. It is noted that the Director stated that the applicant had 33 days to file an appeal. The appeal, therefore, was due on March 22, 2011. Although counsel dated the appeal on March 1, 2011, the appeal was not received until August 1, 2011, 165 days after the Director's decision was sent.

Postage stamps on the envelope in which the appeal was sent indicate that it was mailed several times between March and July 2011, with different postage amounts. In his letter dated July 22, 2011, counsel acknowledges the late filing of the appeal, stating that it "was returned for one reason or the other." Though the first two attempted mailings would have resulted in a timely filed appeal, counsel does not explain why two subsequent delays occurred, including a delay between May and July 2011. Therefore, we conclude that 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 Mexico City, Mexico Field Office. *See* 8 C.F.R. § 103.5(a)(1)(ii). The matter will therefore be returned to the Field Office Director. If the Field Office Director determines that the late appeal meets the requirements of a motion, the motion shall be granted and a new decision will be issued.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.