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



U.S. Citizenship
and Immigration
Services

H6

Date: **SEP 05 2012**

Office: ACCRA, GHANA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:

[REDACTED]

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 in accordance with the instructions on 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,

Perry Chews
Chief, Administrative Appeals Office

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

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the complete motion 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 the delay was reasonable and was beyond the control of the applicant or petitioner.

The record indicates that the AAO issued a decision on February 25, 2011. It is noted that the AAO decision properly gave notice to the applicant that he had 30 days to file the motion to reconsider or motion to reopen. The AAO's decision also indicated that the motion to reconsider or motion to reopen must be submitted to the office that originally decided the case.

Although the Form I-290B Notice of Appeal or Motion is dated March 23, 2011, it was initially sent to the AAO and not the office that originally decided the case, Accra, Ghana. Therefore, the motion was not received by the Field Office Director until May 18, 2011, 82 days after the decision was issued. Accordingly, the appeal was untimely filed. Furthermore, as the AAO provided clear instructions on where the motion should be submitted, the applicant failed to show that the delay was reasonable or beyond his control.

Even if the AAO were to consider the motion to reopen and reconsider timely, the motion failed to meet the requirement, set forth in 8 C.F.R. § 103.5(a)(1)(iii)(C), 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." In this matter, the motion does not contain the statement required by this regulation.

Therefore, because the instant motion was untimely and did not meet the applicable filing requirement listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must be rejected.

ORDER: The motion is rejected.