

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: **AUG 21 2013** OFFICE: SAN SALVADOR FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v); Application for Permission to Reapply for Admission into the United States after Deportation or Removal filed under Section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, San Salvador, El Salvador, and 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 the Field Office Director issued the decision on July 6, 2012 to the applicant and the applicant's attorney at the addresses on record. The applicant had 33 days to file an appeal with the Field Office Director. Counsel states that the applicant filed a Form I-290B with the Field Office Director on August 9, 2012; however, the record indicates that the application was received with improper fee payment. On August 30, 2012, the Field Office Director issued a decision rejecting the Form I-290B as untimely, stating that the appeal had been properly filed on August 24, 2012. The Field Office Director further stated that the application was reviewed as a Motion to Reopen/Reconsider but the motion was not found to meet the definition of a motion as set forth in 8 C.F.R. § 103.5(a)(2) and 8 C.F.R. § 103.5(a)(3). Counsel filed a new Form I-290B appealing the Field Office Director's decision on November 26, 2012, well beyond 33 days from the August 30, 2012 Field Office Director decision. Both appeals were untimely.

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. In this case, the information in the file was reviewed and was found not to meet the definition of a motion.

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

ORDER: The appeal is rejected.