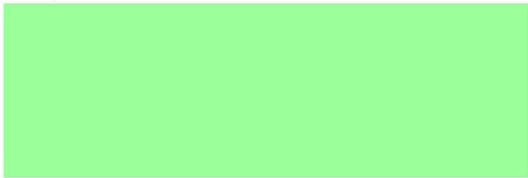


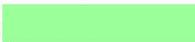


**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE **AUG 22 2013** OFFICE: ANAHEIM, CA

FILE: 

IN RE: APPLICANT: 

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 (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.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the International Adjudications Support Branch on behalf of 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. § 103.5a(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 sent the decision on September 24, 2012 to the applicant at the applicant's address of record. It is noted that the Field Office Director stated that the applicant had 33 days to file an appeal. Although the applicant dated the appeal on October 26, 2012, the appeal was not received until November 17, 2012, 54 days after the decision was issued. Therefore, the appeal was untimely filed and must be rejected.¹

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.

¹ The AAO further notes the first time the applicant attempted to file the appeal, it was rejected because the applicant submitted it without the application fee. This first submission was also received late, 36 days after the decision was issued.