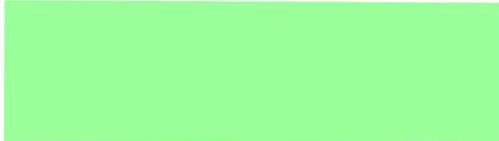


(b)(6)



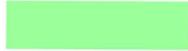
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090

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

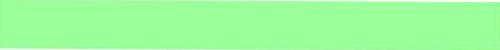


DATE: JUN 27 2013

Office: MEXICO CITY

FILE: 

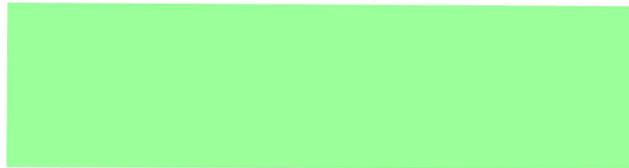
IN RE:

Applicant: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Mexico City. The Administrative Appeals Office (AAO) dismissed a subsequent appeal and motion. The matter is now before the AAO on a second motion. The motion will be rejected.

In order to properly file a motion to reopen, the regulation at 8 C.F.R. § 103.5(a) provides that the affected party or the attorney or representative of record must file the complete motion within 30 days of service of the unfavorable decision. If the decision was mailed, the motion must be filed within 33 days. *See* 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). A failure to file within the period may be excused in the discretion of the Service where it was demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *See* 8 C.F.R. § 103.5(a)(1)(i).

The record reflects that the AAO's decision granting the motion but denying the underlying waiver application was issued on March 28, 2013. The cover letter to that decision specifically stated that any motion must be filed within 30 days of the decision.

In this case, the record shows that the applicant's second motion was mailed on April 30, 2013, thirty-three days after the date of the decision, and was not properly filed until May 2, 2013. Furthermore, the applicant has not demonstrated that the delay was reasonable and beyond his control. Accordingly, the motion was untimely filed.

Although the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that an untimely motion may be excused in the discretion of the Service, the regulation at 8 C.F.R. § 103.5(a)(1)(iii)(C) requires 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 case, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). Moreover, in response to the question asking for the basis for the appeal or motion, the Form I-290B states, in its entirety, "Additional Evidence – Attached." 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. *See* 8 C.F.R. § 103.5(a)(2). A motion to reconsider must 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 Service policy. *See* 8 C.F.R. § 103.5(a)(3). Here, counsel provides no brief or explanation for why the case should be reopened or reconsidered.

The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements must be dismissed. Therefore, even if the Service excused the untimeliness of the motion, the motion would nonetheless be dismissed for failing to meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C) and failing to meet the applicable requirements of a motion. As the motion was untimely filed, the motion is rejected.

ORDER: The motion is rejected.