



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: MAR 07 2013 OFFICE: TEGUCIGALPA, HONDURAS

FILE [REDACTED]

IN RE: [REDACTED]

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:

SELF-REPRESENTED

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 that reads "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Tegucigalpa, Honduras on February 1, 2010, and the Administrative Appeals Office (AAO) dismissed the applicant's appeal on May 1, 2012. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be rejected as untimely filed.

The regulations provide at 8 C.F.R. § 103.5(a)(1)(i) that in order to properly file a motion to reopen or reconsider, the affected party must file the motion within 30 days after 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 regulations state further at 8 C.F.R. § 103.5(a)(iii)(E), that the Form I-290B and fee must be submitted to the office maintaining the record upon which the unfavorable decision was originally made. The date of filing is the date of actual receipt of the motion, not the date of mailing. *See* 8 C.F.R. § 103.2(a)(7)(i).

In the present case, the AAO issued a decision dismissing the applicant's appeal on May 1, 2012. The AAO decision was mailed to the applicant, and it advised the applicant she could file a motion to reopen or reconsider within 30 days of the date on the AAO decision. The applicant was further advised that such a motion must be submitted with a completed Form I-290B, Notice of Appeal or Motion (Form I-290B) and payment of fee to the office that originally decided the applicant's case. On June 1, 2012, the applicant submitted a Form I-290B with attachments and fee directly to the AAO. The Form I-290B, attachments and fee were returned to the applicant on June 5, 2012, based on the AAO's inability to accept filing and fee payment for a Form I-290B. The applicant filed the Form I-290B with fee at the office that originally decided her case on July 9, 2012.

Although counsel submitted the applicant's Form I-290B to the AAO within the time frame allowed for filing a motion to reopen or reconsider, the motion was not considered filed until the applicant submitted the completed Form I-290B with fee to the office that originally issued a decision in the applicant's case. The applicant filed the Form I-290B with the office that originally issued a decision in her case on July 9, 2012, 70 days after the AAO decision was issued. The motion was therefore untimely filed.

Under 8 C.F.R. § 103.5(a)(1)(i), the untimely filing of a motion to reopen or reconsider 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. In the present matter the applicant states that her motion was filed timely because it was timely submitted to the AAO. The applicant does not establish that her failure to timely file the motion with the office that originally issued a decision in her case was reasonable or beyond her control. The AAO therefore determines that the motion was untimely filed, and that it must be rejected.

It is noted further that the motion to reopen and reconsider does not meet all applicable requirements for filing a motion. The regulation at 8 C.F.R. §103.5(a)(1)(iii) lists the filing requirements for motions to reopen and motions to reconsider. Section 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 the present matter, the motion does not contain the statement required by 8 C.F.R. § 103.5(a)(1)(iii)(C). 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,

because the instant motion did not meet the applicable filing requirements listed in 8 C.F.R. § 103.5(a)(1)(iii)(C), it must also be rejected for this reason.

**ORDER:** The motion to reopen and reconsider is rejected.