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

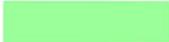


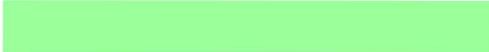
U.S. Citizenship
and Immigration
Services



DATE: **MAR 08 2013**

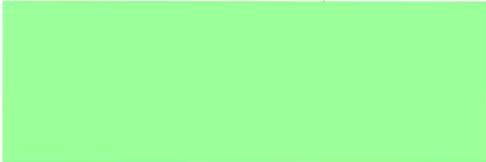
OFFICE: CIUDAD JUAREZ

FILE: 

IN RE: 

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:



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 cursive script that reads "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

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 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). Under 8 C.F.R. § 103.5(a)(1)(i), the failure to timely file 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.

The record indicates that the AAO issued a decision dismissing the applicant's appeal on February 21, 2012. 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 applicant's Form I-290B Notice of Appeal or Motion (Form I-290B) is dated March 16, 2012, the motion to reconsider was not mailed until April 23, 2012 and was not received until April 25, 2012, 64 days after the decision was issued. Accordingly, the motion was untimely filed. Furthermore, though the AAO provided clear instructions about the filing date requirements, the applicant failed to show that the delay was reasonable or beyond his control. Applicant's counsel explains in her brief that the delay was beyond the applicant's control because the applicant's wife needed to organize legal representation. Because the Form I-290B was signed by counsel on March 16, 2012, as noted above, and this date is within the time permitted to file a motion, counsel's statement that the applicant's spouse was organizing legal representation is unclear and does not establish that the delay, even had it been found reasonable, was beyond the applicant's control.

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. Motions must 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." The current 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 is rejected.