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



U.S. Citizenship
and Immigration
Services



DATE: OCT 21 2013 OFFICE: SANTO DOMINGO

FILE: [REDACTED]

IN RE: APPLICANT: [REDACTED]

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.

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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santo Domingo, the Dominican Republic, and an appeal was summarily dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion.¹ The motion will be rejected as untimely filed.

The regulation at 8 C.F.R. § 103.5(a) states that any motion to reopen and/or reconsider must be filed within 30 days of the decision that the motion seeks to reopen and/ reconsider, unless it is demonstrated that a delay was reasonable and was beyond the control of the applicant or petitioner.

The record indicates that the AAO issued its decision on July 16, 2012. On the cover page, the AAO told the applicant that he had 30 days to file a motion, and that motions could not be filed directly with the AAO. *See AAO Decision*, July 16, 2012. Despite these instructions, the applicant filed the Form I-290B directly with the AAO on August 16, 2012. It was returned to the applicant and the applicant resubmitted the Form I-290B to the correct filing location on September 19, 2012, 65 days after the AAO decision was issued. Accordingly, the Form I-290B was filed too late. There is no indication that failure to timely file was reasonable and was beyond the control of the applicant. The AAO therefore must reject the motion as late.

Even if the second Form I-290B was timely filed, it would have to be dismissed for the same reason the first Form I-290B was dismissed. The applicant did not provide any information as to why the AAO decision was wrong. A motion to reopen must state the new facts and be supported by affidavits or other documentary evidence. 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. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The applicant made no statements on the Form I-290B, nor did he attach any evidence with the Form I-290B. No new facts or evidence were provided, and the applicant did not submit anything to establish that the AAO's decision was based on an incorrect application of law or service policy. Without any statements or evidence, the Form I-290B does not meet the definition of either a motion to reopen or reconsider.

Therefore, even if the Form I-290B were accepted as properly and timely filed, which it was not, it would be found not to meet the definition of a motion.

ORDER: The motion is rejected as untimely filed.

¹ The applicant submitted a copy of the same Form I-290B that he first submitted in 2011. The Form I-290B is marked "Appeal." You cannot appeal a decision from the AAO so the AAO will accept this as a motion.