

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



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **AUG 18 2015**

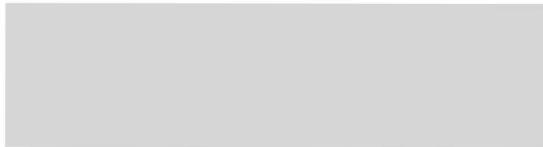
FILE #: [REDACTED]

APPLICATION #: [REDACTED]

IN RE: [REDACTED]

PETITION: Application for Waiver of Grounds of Inadmissibility pursuant to Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v))

ON BEHALF OF PETITIONER:



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. 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 for".

Ron Rosenberg  
Chief, Administrative Appeals Office



**DISCUSSION:** The Director, Nebraska Service Center, denied the waiver application. An appeal of the denial was summarily dismissed by the Administrative Appeals Office (AAO). The applicant filed a motion to reopen and reconsider the decision. The motion will be denied.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that an affected party must file a motion to reopen or reconsider a proceeding within 30 days of the decision that the motion seeks to reopen or reconsider. If the decision is mailed, the 30-day period for submitting an appeal begins 3 days after it is mailed. 8 C.F.R. § 103.8(b). The date of filing is the date of actual receipt of the appeal, not the date of mailing. 8 C.F.R. § 103.2(a)(7)(i).

The record reflects that we issued our decision dismissing the appeal on December 18, 2014. The decision's cover page states the specific requirements for filing a motion to reopen or reconsider could be found at 8 C.F.R. § 103.5, the applicant had 33 days to file a motion, and the online instructions to Form I-290B, Notice of Appeal or Motion, provide additional information. Although counsel dated the Form I-290B for the instant motion January 19, 2015, the record indicates that he mailed the motion on January 22, 2015, at which time the motion was already late. We received the motion on January 23, 2015, 36 days after the decision was issued. Therefore, the motion to reopen and reconsider was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the time limit for filing a motion. However, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the 30 days "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 applicant did not assert that the delay was reasonable or was beyond their control. 8 C.F.R. § 103.5(a).

Therefore, we find that as a matter of discretion, the applicant's failure to file the motion within the period allowed was not reasonable or beyond the control of the applicant. As the motion to reopen and reconsider was untimely filed, it must be denied.

Accordingly, the motion will be denied as untimely filed.

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