



U.S. Citizenship  
and Immigration  
Services

(b)(6)

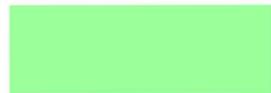


Date:

**APR 03 2013**

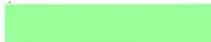
Office: NEBRASKA SERVICE CENTER

FILE:



IN RE:

Applicant:



APPLICATION:

Application for a Reentry Permit Pursuant to Section 223 of the Immigration and Nationality Act, 8 U.S.C. § 1203

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 Nebraska Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron M. Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The applicant is a five-year-old native and citizen of China who seeks to obtain a travel document (reentry permit) under section 223 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1203. The director denied the application after determining that the applicant abandoned her application by failing to appear as notified to have her biometrics captured.<sup>1</sup>

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a U.S. Citizenship and Immigration Services (USCIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the director issued the decision on August 16, 2012. The Form I-290B, Notice of Appeal or Motion, while dated September 4, 2012, was received and stamped by the Service Center on October 11, 2012, fifty-seven (57) days after the decision was issued. Accordingly, the appeal was untimely filed and must be rejected.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the time limit for filing an appeal. However the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. An untimely-filed appeal must meet specific requirements to be treated as a motion. The regulation at 8 C.F.R. § 103.5(a)(2) requires that a motion to reopen state the new facts to be provided in the reopened proceeding, supported by affidavits or other documentary evidence. Furthermore, 8 C.F.R. § 103.5(a)(3) requires that 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 USCIS policy. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the director of the Nebraska Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii).

A review of the record indicates that the appeal does not meet the requirements of a motion. The applicant has not provided new facts and has not established that the director's decision was based upon an erroneous conclusion of law. The applicant's mother states on appeal that her daughter, the

---

<sup>1</sup> The applicant's mother, [REDACTED] filed the application and the appeal on behalf of the applicant.

applicant is five years old, and that she believed that since the applicant is less than 14 years old, that the applicant does not need Biometrics for an application for a Travel Document.<sup>2</sup>

As the appeal was untimely filed and the applicant has failed to provide any new facts or evidence that support a motion to reopen or reconsider, the appeal must be rejected.

**ORDER:** The appeal is rejected as untimely filed.

---

<sup>2</sup> The record reflects that On May 1, 2012, the applicant was notified to appear at a designated Application Support Center to have her biometrics captured and that if she failed to appear as scheduled, her application will be considered abandoned. The applicant was properly put on notice as to the implication for not having her biometrics captured. The appointment notice did not exclude the applicant from having her biometrics captured based on her age. The record reflects that the applicant had appeared in the past at an Application Support Center (ASC) to have her biometrics captured. The applicant had appeared on November 18, 2009 and February 23, 2011, at an ASC location and had her photographs captured. While the new biometrics requirements for application for re-entry permits and refugee travel documents exempt applicants up to 14 years of age and after 79 years of age from having their fingerprints taken at an ASC, no one is exempt from having his/or her photograph taken at an ASC. Therefore, the applicant's assertions on appeal is without merit.