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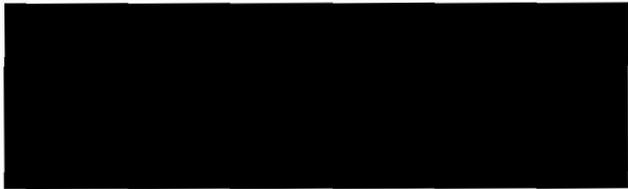
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

U.S. Citizenship  
and Immigration  
Services

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**AUG 10 2009**

FILE: [REDACTED] Office: ROME, ITALY Date:

IN RE: Applicant: [REDACTED]

PETITION: Application for Refugee Travel Document Pursuant to 8 C.F.R., § 223.1(b).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Acting District Director, Rome, Italy, denied the application, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen and reconsider. The motion will be granted. The previous decision will be affirmed and the petition will be denied.

The applicant is a native and citizen of Uzbekistan, who seeks to obtain a refugee travel document pursuant to 8 C.F.R. § 223.1(b). The director denied the application because the applicant, who was outside of the United States when he filed his application, had been outside of the United States for more than one year at the time he filed his application. The AAO affirmed the director's findings.

On motion, counsel claims that under the Ninth Circuit Court of Appeals' decision in *Cintron v. Union Pacific Railroad Co.*, 813 F.2d 917 (9<sup>th</sup> Cir. 1987), the applicant's payment of \$190.00, which included an overpayment \$20.00, was for the correct amount, and thus should have retained its December 22, 200[6] filing date. Counsel also cites to two Eighth Circuit Court of Appeals' decisions, *Schlueter v. Anheuser-Busch, Inc.*, 132 F.3d 455 (8<sup>th</sup> Cir. 1998) and *Warren v. Department of the Army*, 867 F.2d 1156, 1160-61 (8<sup>th</sup> Cir. 1989), to state that the AAO should apply the equitable tolling doctrine because the applicant relied upon instructions issued by U.S. Citizenship and Immigration Services (USCIS) that resulted in the overpayment. Counsel also states that the AAO failed to consider the applicant's argument that USCIS should have used its discretion to grant his application pursuant to the *Protocol Relating to the Status of Refugees* (1967) and the *Convention Relating to the Status of Refugees* (1951). Finally, counsel claims that the applicant is currently appealing his placement on the "No-Fly List," which delayed his original travel plans to return to the United States, and that the applicant has also learned that his file has been recommended for deletion by the Commission for the Control of INTERPOL's Files.

The regulation at 8 C.F.R. § 223.1(b) states in pertinent part:

*Refugee travel document.* A refugee travel document is issued pursuant to this part and article 28 of the United Nations Convention of July 29, 1951, for the purpose of travel. Except as provided in § 223.3(d)(2)(i), a person who holds refugee status pursuant to section 207 of the Act, or asylum status pursuant to section 208 of the Act, must have a refugee travel document to return to the United States after temporary travel abroad unless he or she is in possession of a valid advance parole document.

The regulation at 8 C.F.R. § 223.2(b)(2)(ii) states:

Discretionary authority to adjudicate an application from an alien not within the United States. As a matter of discretion, a district director having jurisdiction over a port-of-entry or a preinspection station where an alien is an applicant for admission, or an overseas district director having jurisdiction over the place where an alien is physically present, may accept and adjudicate an application for a refugee travel document from an alien who previously had been admitted to the United States as a refugee, or who previously had been granted asylum status in the United States, and who had departed

from the United States without having applied for such refugee travel document, provided:

- (A) The alien submits a Form I-131, Application for Travel Document, with the fee required under § 103.7(b)(1) of this chapter;
- (B) The district director is satisfied that the alien did not intend to abandon his or her refugee status at the time of departure from the United States;
- (C) The alien did not engage in any activities while outside the United States that would be inconsistent with continued refugee or asylee status; and
- (D) The alien has been outside the United States for less than 1 year since his or her last departure.

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will only repeat certain facts as necessary here. In this case, the director denied the application because the applicant, who was outside of the United States when he filed his application, had been outside of the United States for more than one year at the time he filed his application. In the AAO's March 4, 2009 decision on appeal, the AAO affirmed the director's findings. Specifically, the AAO agreed with the January 17, 2007 filing date that the acting district director assigned to the applicant's Form I-131. The AAO also found that the acting district director did not abuse her discretion in denying the application because it was filed more than one year after the alien's departure from the United States.

Counsel first contends that the submission of the \$190.00 filing fee should not have resulted in the application being rejected in December 2006 because the correct fee was submitted, although it contained a \$20.00 overpayment. To support his claims, counsel cites to *Cintron v. Union Pacific Railroad Co.*, 813 F.2d 917 (9<sup>th</sup> Cir. 1987). As stated in our prior decision, the regulation at 8 C.F.R. § 103.7(a)(1) states that "fees shall be submitted . . . in the amount prescribed by law or regulation." (Emphasis added). The term "in the amount" refers to the exact filing fee required for the application and not, as counsel contends, an amount that contains the fee for the application even if there is an overpayment. A "Questions and Answers Sheet" entitled "*USCIS Check Instructions*" that was published by the Office of Communications, USCIS, on June 29, 2009, clarifies this point further:

**Q. What amount should I write on the check?**

A. You should fill in the check for the exact amount of your application fees as listed on the [USCIS] website at [www.uscis.gov](http://www.uscis.gov) under the "Immigration Forms" tab. If you write the check for an amount different than the amount on the form, it will delay the processing of your application.

Counsel's citation to a Ninth Circuit decision is not relevant in this proceeding. USCIS employees are bound by the regulations in their administration of the Act, including those regulations that relate to fees.

Counsel argues, in the alternative, that USCIS should equitably toll the filing deadline because the applicant relied upon an erroneous document, *Checklist for an I-131 Application for Refugee Travel Document*, regarding the fee amount. Again, we do not find counsel's argument to be persuasive.

The equitable tolling doctrine is presumed to apply to every federal statute of limitation. *Holmberg v. Armbrecht*, 327 U.S. 392, 397 (1946); *Socop-Gonzalez v. I.N.S.*, 272 F.3d 1176, 1188 (9<sup>th</sup> Cir. 2001). However, not every statutory time limit is a statute of limitations subject to equitable tolling. A crucial distinction exists between statutes of limitation and statutes of repose. *Munoz v. Ashcroft*, 339 F.3d 950, 957 (9<sup>th</sup> Cir. 2003). A statute of limitations limits the time in which a plaintiff may bring suit after a cause of action accrues. A statute of repose, in contrast, "cuts off a cause of action at a certain time irrespective of the time of accrual of the cause of action." *Weddel v. Sec'y of H.H.S.*, 100 F.3d 929, 931 (Fed. Cir. 1996). Statutes of repose are not subject to equitable tolling. *Lampf Pleva, Lipkin, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350, 363 (1991) (superseded on other grounds); *Weddel v. Sec'y of H.H.S.*, 100 F.3d at 930-32.

In this instance, the applicant is seeking a refugee travel document that "is issued pursuant to this part and article 28 of the United Nations Convention of July 29, 1951 . . ." 8 C.F.R. § 223.1(b). Counsel has not provided any evidence that the applicant's entitlement to a refugee travel document derives from a federal statute and that such statute, upon which the one-year filing deadline provided for at 8 C.F.R. § 223.2(b)(2)(ii) is based, is a statute of limitations subject to equitable tolling, and not a statute of repose not subject to equitable tolling. Accordingly, counsel's arguments on this issue are not persuasive.

Counsel's final argument concerns the AAO's declination to discuss USCIS' obligation to protect the applicant under the *Protocol Relating to the Status of Refugees* (1967) and the *Convention Relating to the Status of Refugees* (1951). The regulation at 8 C.F.R. § 223.2(b)(2)(ii) permits a district director to approve an application for a refugee travel document for an applicant who is outside of the United States provided that four distinct criteria are met: (1) the applicant submits a Form I-131, Application for Travel Document, with the fee required under 8 C.F.R. § 103.7(b)(1); (2) the district director is satisfied that the applicant did not intend to abandon his or her refugee status at the time of departure from the United States; (3) the applicant did not engage in any activities while outside the United States that would be inconsistent with continued refugee or asylee status; and (4) the applicant has been outside the United States for less than 1 year since his or her last departure.

If an applicant fails to meet just one criterion of the four listed, the application cannot be approved. Because the applicant did not meet the criterion related to the filing of the application within one year of his departure, it was not necessary to review whether the applicant met the other three criteria, because even if he had, he would still have been ineligible to receive a refugee travel document. For this reason, USCIS's obligation to protect the applicant, which relates to two of the

three criteria listed in the regulation, was not discussed in our prior decision, and will not be discussed presently.<sup>1</sup>

As stated in our prior decision, the AAO agrees with the January 17, 2007 filing date that the director assigned to the applicant's Form I-131. The AAO also finds that the director did not abuse her discretion in denying the application because it was filed more than one year after the applicant's departure from the United States. Accordingly, the AAO shall affirm its prior decision to dismiss the appeal and not disturb the director's denial of the application.

The burden of proof in these proceedings rests solely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden.

**ORDER:** The previous decision of the AAO, dated March 4, 2009, is affirmed. The application is denied.

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<sup>1</sup> Counsel's additional assertions that the applicant is appealing his placement on the "No-Fly List" and that the applicant has learned that his name has been recommended for deletion from INTERPOL's files, are also noted. These issues, however, are not relevant to this proceeding, as the sole issue that the AAO reviewed on appeal was whether the director's assignment of a January 2007 filing date was correct according to the regulations.