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U.S. Department of Homeland Security
20 Mass. Ave. NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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H₁

[Redacted]

FILE: [Redacted]

Office: PHOENIX, AZ

Date: OCT 29 2007

IN RE: [Redacted]

APPLICATION: Application for Waiver of Ground of Inadmissibility

ON BEHALF OF APPLICANT:

[Redacted]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Acting District Director, Phoenix, Arizona denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The record indicates that the Acting District Director issued decisions on November 9, 2005 denying the applicant's motion to reopen her Form I-485 Application for Adjustment of Status and her Form I-601 Application for Waiver of Ground of Excludability. On January 9, 2006 the applicant filed a Form I-290B Notice of Appeal without indicating which decision she was appealing.

The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). As the AAO does not have jurisdiction over the type of I-485 filed under section 245 of the INA, or the subsequent motion filed by the applicant, it will consider the applicant to have appealed the Acting District Director's denial of the Form I-601 waiver application.

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 after 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). The date of filing is not the date of mailing, but the date of actual receipt. See 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the Acting District Director issued the decision on November 9, 2005 and properly informed the applicant that she had 33 days to submit an appeal. The applicant incorrectly submitted the appeal directly to the AAO on December 27, 2005. The District Office in Phoenix, Arizona subsequently received the appeal on January 9, 2006. As the appeal was correctly filed with the District Office in Phoenix, Arizona on January 9, 2006, or 61 days after the decision was issued, the appeal of the Form I-601 was untimely filed.

Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. 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.

A motion to reopen must state the new facts to be proved in the reopened proceeding 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. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 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).

Here, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

As the appeal of the acting district director's denial of the Form I-601 was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.