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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: CHICAGO, IL

Date:

FEB 11 2009

IN RE:

APPLICATION:

Application for Waiver of Ground of Inadmissibility under Section 212(a) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(a)

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

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

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 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 April 18, 2006. It is noted that the director properly gave notice to the applicant that any appeal had to be filed within the allotted time and with the required fee. The appeal in this case was dated May 17, 2006 and postmarked May 19, 2006, but returned because it was not accompanied by the required fee. The appeal, with the appropriate fee, was received by USCIS on May 25, 2006, more than 33 days after the issuance of the director's decision.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. The filing of a motion to reopen and reconsider does not toll the time limit for filing an appeal and the regulations do not provide for an appeal of the dismissal of such a motion. The AAO is therefore without jurisdiction to consider the appeal, and the appeal must be rejected.

The AAO notes that 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).

The appeal in this case is not accompanied by any additional evidence or argument in support of the applicant's hardship claim. Thus, the untimely appeal does not meet the requirements of a motion to reopen or reconsider. There is thus no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

As the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

ORDER: The appeal is rejected.