

Interim Decision #2964

MATTER OF ALEJANDRO

In Deportation Proceedings

A-26334316

*Decided by Board May 2, 1984*

Where the Notice of Appeal (Form I-290A) is not accompanied by the required fee or a correctly executed affidavit requesting waiver of the fee, it is not properly submitted for filing and shall be rejected by the officer having administrative jurisdiction over the case.

CHARGE:

Order: Act of 1952—Sec. 241(a)(2) [8 U.S.C. § 1251(a)(2)]—Entered without inspection

ON BEHALF OF RESPONDENT:

Margo Cowan, Accredited Representative  
El Concilio Manzo, Inc.  
P.O. Box 3007  
Tucson, Arizona 85702

ON BEHALF OF SERVICE:

Ira L. Frank  
General Attorney

BY: Milhollan, Chairman; Maniatis, Dunne, Morris, and Vacca, Board Members

The respondent has submitted a Notice of Appeal (Form I-290A) from a decision of an immigration judge dated October 13, 1982, finding him deportable under section 241(a)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1251(a)(2) (1982), and denying his application for asylum and withholding of deportation. The file will be returned to the local office without further action.

According to the regulations, a Notice of Appeal shall be accompanied by the appropriate filing fee. See 8 C.F.R. §§ 3.3(b), 103.7(a) (1984). If an alien is unable to pay the filing fee, the regulations provide a specific procedure under which prosecution of the appeal without payment of fee may be sought. The regulations provide that the alien shall file an affidavit<sup>1</sup> with his Notice of Appeal in

<sup>1</sup> An affidavit is "a written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation." *Black's Law Dictionary* 54 (5th ed. 1979).

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which he states the nature of the appeal, his inability to pay the fee, and his belief that he is entitled to redress, and which requests permission to prosecute the appeal without prepayment of the fee. 8 C.F.R. § 3.3(b) (1984). When such an affidavit is filed, the officer from whose decision the appeal is taken can certify to the Board his reasons for believing that the appeal is not made in good faith. The Board may in its discretion authorize the prosecution of an appeal without prepayment of a fee. *Id.*

Where the Notice of Appeal is not accompanied by the required fee or a correctly executed affidavit requesting waiver of the fee, it is not properly submitted for filing and shall be rejected by the officer having administrative jurisdiction over the case. In this case, the self-styled affidavit attached to the respondent's appeal is neither signed by the respondent nor is it notarized. We find that this appeal has not been correctly filed. As we conclude that this appeal is not properly before us, we will return the file to the local office.<sup>2</sup>

**ORDER:** The record file is returned to the local office without further action.

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<sup>2</sup> This is not a case in which a question arises regarding the timeliness of an otherwise properly filed appeal. See *Matter of Torre*, 19 I&N Dec. 18 (BIA 1984); *Matter of Gamboa*, 14 I&N Dec. 244 (BIA 1972).