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U.S. Citizenship  
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Services

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DL

FILE:

[REDACTED]

Office: PHOENIX

Date:

AUG 09 2007

IN RE:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application and adjustment application were denied by the District Director, Phoenix, Arizona. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

An affected party filing from within the United States has 30 days from the date of an adverse decision to file an appeal. An appeal received after the 30-day period has tolled will not be accepted. The 30-day period for submitting an appeal begins 3 days after the Notice of Decision is mailed. 8 C.F.R. § 103.5a(b).

The record reflects that the District Director sent the decision on November 9, 2005 to the applicant at her address of record. USCIS received the appeal 34 days later on December 13, 2005. Therefore, the appeal was untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) provides that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. § 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3), 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: (1) 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; and (2) 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).

The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the District Director of the Los Angeles, California District Office. *See* 8 C.F.R. § 103.5(a)(1)(ii). The District Director declined to treat the late appeal as a motion and forwarded the matter to the AAO. On appeal, counsel<sup>1</sup> restates the reasons previously provided by the applicant in support of her claim that her U.S. citizen husband would suffer extreme hardship if her waiver application is denied, but submits no new evidence and cites no pertinent precedent decision to establish that the director's decision was based on an incorrect application of law or policy. On appeal, counsel requests 30 days to present a brief, but no brief has been submitted to date.

As neither counsel nor the applicant presents new facts to be considered, or provides any precedent decisions to establish that the director's denial was based on an incorrect application of law or USCIS policy, the appeal will not be treated as a motion to reopen or reconsider and will, therefore, be rejected.

As always, the burden of proving eligibility for the benefit sought remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not sustained that burden.

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<sup>1</sup> The applicant appears to be represented by [REDACTED]; however the record does not contain a Form G-28, Notice of Entry of Appearance as Attorney or Representative, from [REDACTED] signed by the applicant consenting to disclosure of records to [REDACTED]. The G-28 on file from [REDACTED] is not signed by the applicant. Accordingly, all representations will be considered but the decision will be furnished only to the applicant.



**ORDER:** The appeal is rejected.