



U.S. Citizenship
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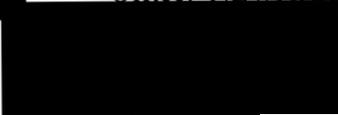


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FEB 02 2007

FILE:  Office: NEWARK, NEW JERSEY

Date:

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(g)(2) of the Act,
8 U.S.C. § 1182(g)(2),

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Application for a Waiver of Inadmissibility was denied by the District Director, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The applicant applied for adjustment of status based on his status as an asylee; however, the district director found that the applicant was inadmissible to the U.S. pursuant to § 212(a)(1)(A)(i) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1182(a)(1)(A)(i), as an alien who has a communicable disease of public health significance, including HIV, as in the instant case. The applicant sought a waiver of inadmissibility pursuant to § 212(g) of the Act, but the district director denied the waiver, concluding that the evidence failed to establish the existence of qualifying relatives for the purposes of waiver eligibility.

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 district director issued the decision on May 21, 2004 and gave notice to the applicant that he had 30 days to file the appeal. CIS received the appeal on June 24, 2004, or 34 days after the decision was issued. Accordingly, the appeal was untimely filed.

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. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the district director. *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.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.