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**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



FILE:

Office: DENVER DISTRICT OFFICE

Date:

AUG 19 2005

IN RE: Applicant:

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

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Denver District Office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 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). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a CIS office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the interim district director issued the decision on August 28, 2003. The decision was mailed to the applicant by Certified Mail with a PS Form 3811, Domestic Return Receipt, on August 28, 2003. The U.S. Postal Service returned the PS Form 3811 to Citizenship and Immigration Services (CIS) as evidence that the decision was delivered. The PS Form 3811 reflects that on September 10, 2003, an individual identifying himself as "Chen" signed for the delivery. Thus, CIS records reflect that the applicant was properly notified that his Form I-601, Application for a Waiver of Ground of Excludability, was denied. It is observed that the director properly gave notice to the applicant that he had 33 days to file the appeal. According to the date stamp on the Form I-290B Notice of Appeal, it was received by CIS on January 12, 2004, or 137 days after the decision was issued. Therefore, the appeal was untimely filed.

Counsel for the applicant asserts that she and the applicant did not receive notice that the Form I-601 application was denied until December 2003. Counsel contends that the applicant should have been given 33 days after the middle of December in order to file an appeal. However, as discussed above, the record of proceeding contains conclusive evidence that the decision was properly delivered to the applicant on September 10, 2003. The applicant had until September 30, 2003 to file the appeal. *See* 8 C.F.R. § 103.5a(b).

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 interim district director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The interim 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.