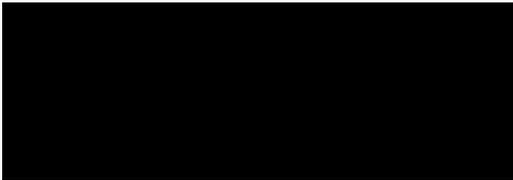


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U.S. Citizenship
and Immigration
Services

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Handwritten initials

FILE:



Office: MANILA, PHILIPPINES

Date: **OCT 24 2005**

IN RE:



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.

Handwritten signature of Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Officer-in-Charge, Manila, Philippines denied the Form I-601 Application for Waiver of Grounds of Inadmissibility. 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 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 record indicates that the officer-in-charge issued the decision on April 21, 2003. The appeal was received by the proper CIS office in Manila on March 11, 2004, or 325 days after the decision was issued. The record includes a letter from counsel stating that the appeal was initially sent to the San Antonio, TX CIS office and was returned seven months later with instructions to file the case with the Manila CIS office. *Letter from Counsel*, at 1, dated February 17, 2004. The AAO notes that the denial letter from the Manila CIS office clearly states that the appeal should be submitted to their office. *See Form I-292*, dated April 21, 2003. Counsel asserts that she was given until June 1, 2004 to resubmit the appeal. *Letter from Counsel*, at 1. However, no proof was submitted to verify this allegation. 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 officer-in-charge, Manila, Philippines. *See* 8 C.F.R. § 103.5(a)(1)(ii). The officer-in-charge 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.