



U.S. Citizenship
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Services

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FILE:

Office: MADRID, SPAIN

Date: OCT 27 2005

IN RE: Applicant:

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Madrid, Spain. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The applicant is a native and citizen of Portugal. He is married to a U.S. citizen and is the beneficiary of a petition for alien relative. The applicant was found inadmissible to the United States pursuant to §§ 212 (a)(6)(C)(i), (a)(9)(B)(ii)(II), and (a)(9)(A)(i)(II) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i), (a)(9)(B)(i)(II), and (a)(9)(A)(ii)(II). The applicant seeks a waiver of inadmissibility in order to reside in the United States with his wife and children.

The officer in charge found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse, and the application was denied accordingly. On appeal, the applicant contends that the officer in charge misinterpreted the facts presented, specifically regarding the fact that he has financially supported his family. This is the applicant's only allegation of error on appeal.

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 record indicates that the officer in charge issued the decision on March 23, 2004 and gave notice to the applicant that he had 33 days to file the appeal. CIS received the appeal on April 27, 2004, or 35 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 officer in charge. *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.