

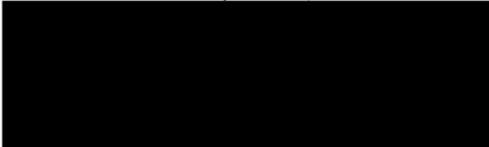
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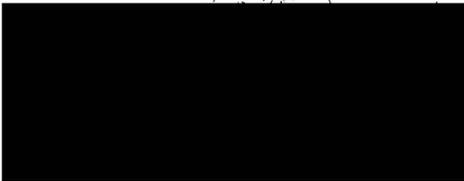
FILE: A77 073 413 Office: LOS ANGELES, CA (SANTA ANA)

Date: **AUG 04 2006**

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, California, and 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 district director issued the decision on September 17, 2004. It is noted that the district director properly gave notice to the applicant that she had 33 days to file the appeal. The appeal was received by Citizenship and Immigration Services (CIS) on October 22, 2004, or 35 days after the decision was issued. Accordingly, the appeal was untimely filed.

The AAO notes that, although briefs and additional evidence can be filed at a later point in the time, the Form I-290B appeal must be filed within the 33 days allotted.

The record indicates that the appeal was initially received by the CIS office in Santa Ana, California on October 15, 2004 and returned to the applicant. It was then resubmitted to the CIS office in Santa Ana, California on October 22, 2004. It is noted that the district director properly gave notice to the applicant that the appeal must be submitted with a filing fee of \$110. The appeal is not properly filed until it is received with the proper payment.

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.