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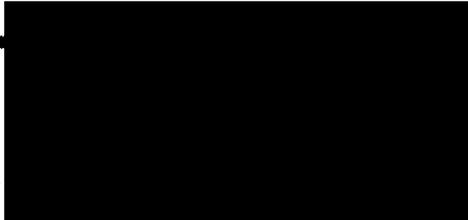
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
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H2

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Office: LOS ANGELES

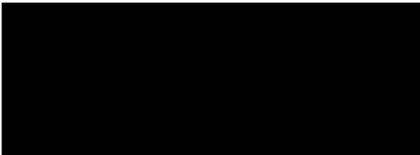
Date: **AUG 18 2006**

IN RE:



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

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, denied the waiver application. 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 district director issued the decision on January 5, 2005. It is noted that the district director properly gave notice to the applicant that he had 33 days to file the appeal. Citizenship and Immigration Services (CIS) received the appeal on February 14, 2005, or 40 days after the decision was issued. Accordingly, the appeal was untimely filed.

The AAO notes that the record contains evidence that counsel filed a brief in support of appeal by February 4, 2005, but did not include a Notice of Appeal to the Administrative Appeals Office (Form I-290B). It is noted that the district director properly gave notice to the applicant that the Form I-290B was required. On February 4, 2005, the district director returned counsel's brief with instructions to file the Form I-290B. The Form I-290B was executed on February 9, 2005, 35 days after the decision was issued. The regulations regarding appeals to the AAO clearly state that, while briefs and evidence in support of the appeal may be submitted at a later date, an applicant must file the Form I-290B within the 33 days.

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, Los Angeles, California. *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.