



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: LIMA, PERU Date: JUN 06 2006

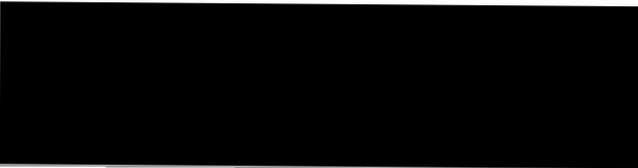
IN RE:



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.

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

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Acting Officer in Charge denied the waiver application and 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 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 acting officer in charge issued the decision on October 12, 2004. It is noted that the acting officer in charge properly gave notice to the petitioner that he had 33 days to file the appeal. The appeal was received by the Citizenship and Immigration Services (C(S) Office in Peru on November 30, 2004, or 49 days after the decision was issued. Accordingly, the appeal was untimely filed.

The AAO notes that the appeal was initially sent directly to the office of the AAO before it was filed with the proper office, the U.S. Embassy in Peru. The AAO also notes that an appeal is not properly filed until it reaches the proper office. The applicant's attorney submitted a letter stating that the appeal was initially sent to the AAO per the instructions on the denial of the applicant's waiver application. The AAO finds that the denial of applicant's waiver application does not state that the appeal should be filed directly with the AAO. The cover page of the application's denial sent from the U.S. Embassy in Peru states:

The petitioner may, if she wishes, appeal this decision. The petitioner must submit such an appeal to **THIS OFFICE** with a filing fee of \$110.00 by international money order...It must reach **THIS OFFICE** within 15 calendar days from the date the notice is served (33 days if this notice is mailed). Do **NOT** send the appeal directly to the Board.

Therefore, the application is untimely filed as it did not reach the CIS office in Peru until 49 days after the decision was mailed. 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 Acting Officer in Charge. *See* 8 C.F.R. § 103.5(a)(1)(ii). The acting office 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.