



U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: LOS ANGELES

Date: JUN 07 2006

IN RE:

PETITION: 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 PETITIONER:

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 Administrative Appeals Office (AAO), dismissed the appeal of the waiver application. The matter is now before the AAO on a motion to reopen or reconsider. The motion to reopen or reconsider will be dismissed.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the motion to reopen or reconsider within 30 days of service of the unfavorable decision. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the AAO issued the decision on January 20, 2004. On March 4, 2004, or 44 days after the decision was issued, counsel incorrectly filed the appeal with the AAO. A motion is not properly filed until the office, which originally decided the case, in this case, the Los Angeles District Office, receives it. On March 11, 2004, the AAO returned the appeal to counsel and informed him that he had incorrectly filed the motion with this office. Citizenship and Immigration Services (CIS) received the motion on March 25, 2004, or 65 days after the decision was issued on January 20, 2004. Accordingly, the motion was untimely filed.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states that failure to file within the 30 days of the decision that the motion seeks to reopen may be excused where it is demonstrated that the delay was reasonable and was beyond the control of the applicant. Counsel fails to provide a reasonable excuse as to why he did not file the motion within 30 days of the issuance of the decision or why the motion was not filed correctly within 30 days of the mailing of the decision.

As the motion was untimely filed, it must be dismissed.

**ORDER:** The motion is dismissed.