



U.S. Citizenship  
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Services

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FILE:

Office: EL PASO

Date: JUN 14 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 District Director, El Paso, Texas, 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 March 10, 2003. It is noted that the district director properly gave notice to the applicant that she had 33 days to file the appeal with the district office. On April 28, 2003, the applicant incorrectly filed the appeal with the Texas Service Center (TSC). An appeal is not properly filed until the office that made the decision receives it. The AAO notes that, even if the applicant had correctly filed the appeal with the district office on April 28, 2003, the appeal would have been received 49 days after the decision was issued. On May 19, 2003, the TSC returned the appeal to the applicant and informed her that she had not provided a receipt number for the application from which she was appealing. On May 19, 2003, the applicant re-filed the appeal with the TSC. On May 21, 2003, the TSC returned the appeal to the applicant informing her that she had incorrectly filed the appeal with the TSC. The district office received the appeal on May 29, 2003, or 80 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 district director, El Paso, Texas. *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.