

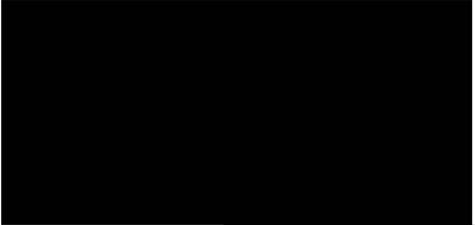


U.S. Citizenship
and Immigration
Services

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FILE:



Office: BANGKOK

Date: JUN 14 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: Self-represented

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 District Director, Bangkok, Thailand, 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 acting district director issued the decision on December 16, 2004. It is noted that the acting district director properly gave notice to the applicant that he had 33 days to file the appeal. On January 6, 2005, the applicant's spouse filed supporting documents for the appeal with the AAO. An appeal is not properly filed until the district office receives it. Citizenship and Immigration Services (CIS) received the appeal on January 27, 2005, or 42 days after the decision was issued. Accordingly, the appeal was untimely filed.

Moreover, the Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B), was executed on January 26, 2004, 41 days after the decision was issued.

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 district director, Bangkok, Thailand. *See* 8 C.F.R. § 103.5(a)(1)(ii). The acting 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.