



U.S. Citizenship
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FILE:



Office: LOS ANGELES, CALIFORNIA

Date: MAY 12 2006

IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for a Waiver of Inadmissibility was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record reflects that on September 17, 2003, the district director found that the applicant was inadmissible to the U.S. pursuant to § 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1182(a)(2)(A)(i)(I), as an alien who has been convicted of a crime involving moral turpitude. The district director concluded that the applicant had failed to establish that her qualifying relatives would experience extreme hardship on account of her inadmissibility.

Counsel asserts that the applicant was served with the denial decision on November 19, 2003, and that the appeal that CIS received on December 3, 2003 was timely. Counsel also refers to the Notice of Appeal Form I-290, on which the applicant wrote a brief statement. On her Form I-290, the applicant indicated that her husband was a lawful permanent resident (LPR), and her eighteen year old son was about to naturalize. She also noted that she had a native-born U.S. citizen eleven year old child. She stated that her husband and sons would suffer on account of her inadmissibility, as her sons would not be able to adjust to life in Colombia, and her husband would not be able to find suitable employment in that country.

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 director first issued the decision on September 17, 2003 to the applicant's address of record. The envelope in which the decision was sent reflects that the post office gave the applicant two notices of the mailing, yet the decision went unclaimed and was returned to CIS. CIS again sent the decision to the applicant's address of record, and the applicant filed her appeal on December 3, 2003, 77 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. *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.