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U.S. Citizenship  
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[REDACTED]

FILE: [REDACTED]

Office: PHOENIX (RENO)

Date: **MAY 26 2006**

IN RE: [REDACTED]

PETITION: 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 PETITIONER:

[REDACTED]

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, Phoenix, Arizona,, 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 October 9, 2002. It is noted that the district director properly gave notice to the applicant that he had 33 days to file the appeal. Citizenship and Immigration Services (CIS) received the appeal on November 27, 2002, or 49 days after the decision was issued. Accordingly, the appeal was untimely filed.

The AAO notes that the record contains evidence of delayed receipt of the decision. However, there is no evidence in the record that the decision was mailed after October 9, 2002 or to an incorrect address. Moreover, the Notice of Appeal to the Administrative Appeals Office (Form I-290B), was executed November 26, 2002, 48 days after the decision was issued. The AAO notes that, on October 31, 2002, CIS received a motion for continuance of time to submit the appeal. Counsel asserts that, pursuant to 8 C.F.R. § 3.29, a motion for continuance may be granted for good cause shown. The regulations to which counsel cites refer to motions for continuance before the Executive Office of Immigration Review (EOIR) and not to appeals before the AAO. The regulations regarding appeals to the AAO clearly state that, while briefs and evidence in support of the appeal may be submitted at a later date, the AAO has no authority to extend the 33 days, as stipulated in the regulations, in which an applicant must file the Form I-290B.

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, Reno, Nevada. *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.