



U.S. Citizenship
and Immigration
Services

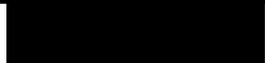
PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

H2



FILE:



Office: MIAMI, FL Date: MAR 12 2007

IN RE:



APPLICATION: 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 APPLICANT: 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Miami, Florida denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The AAO notes that the Form I-290B, Notice of Appeal to the Administrative Appeals Office, was filed by an individual who claims to be the applicant's attorney or representative. In that the record does not include a Form G-28, Notice of Appearance as Attorney or Representative, authorizing this individual to act on behalf of the applicant, the AAO will consider the applicant to be self-represented.

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 January 5, 2005. 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. The applicant incorrectly filed the appeal with the AAO on February 8, 2005. An appeal is not properly filed until the district office receives it. The AAO returned the appeal to the applicant and informed her that she had incorrectly filed the appeal with this office. The appeal was received by Citizenship and Immigration Services (CIS) on March 3, 2005, or 57 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, Tampa, Florida. *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.