

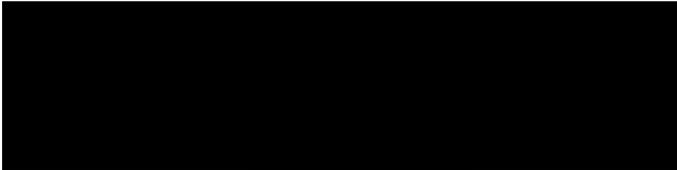
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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Room 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: FRANKFURT, GERMANY Date: MAY 22 2007

IN RE: [REDACTED]

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 waiver application was denied by the Officer-in-Charge (OIC), Frankfurt, Germany, and 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 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 OIC issued his decision on May 16, 2006. It is noted that the director gave notice to the applicant that he had 30 days in which to file the appeal. Despite the notice on the letter of denial that the appeal was not to be sent directly to the AAO, it was sent to the AAO. It was not properly received by the Frankfurt office of Citizenship and Immigration Services until July 11, 2006, or 56 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 service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The OIC 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.