



U.S. Citizenship
and Immigration
Services

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invasion of personal privacy

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FILE:

[REDACTED]

Office: ROME, ITALY

Date: SEP 23 2005

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

[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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Regional Immigration Attaché, Rome, Italy. 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 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 regional immigration attaché issued the decision on February 25, 2004. It is noted that the district director properly gave notice to the applicant that he had 33 days to file the appeal. The appeal was received by Citizenship and Immigration Services on April 5, 2004, or 40 days after the decision was issued. Accordingly, the appeal was untimely filed.

The AAO notes that, although briefs and additional evidence can be filed at a later point in the time, the Form I-290B appeal must be filed within the 33 days allotted.

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 regional immigration attaché. *See* 8 C.F.R. § 103.5(a)(1)(ii). The regional immigration attaché declined to treat the late appeal as a motion and forwarded the matter to the AAO. The AAO notes that counsel submits an affidavit describing, in detail, the efforts of counsel's office to submit the applicant's appeal. *In the Matter of Form I-290B Notice of Appeal to the Administrative Appeals Unit for Francesco Galluzzo*, dated April 1, 2004. The AAO acknowledges that administrative error and shipping delays are hazards inherent in international correspondence, however, there is no exception to the timeframes mandated by regulation.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.