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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

763

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FILE:



Office: ATHENS, GREECE

Date:

APR 17 2007

IN RE:



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

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.

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), Athens, Greece, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

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 OIC issued his decision on May 29, 2004. It is noted that the director properly gave notice to the applicant that he had 33 days to file the appeal. The appeal was received on April 4, 2005, 310 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 OIC. *See* 8 C.F.R. § 103.5(a)(1)(ii). However, the OIC declined to treat the late appeal as a motion and instead forwarded the matter to the AAO.

As the appeal was untimely filed and the OIC declined to treat the appeal as a motion, the AAO has no jurisdiction over this matter, and it must be rejected.

ORDER: The appeal is rejected.