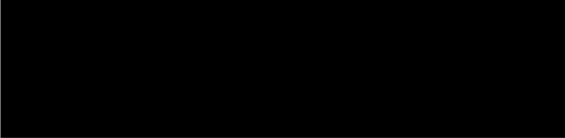


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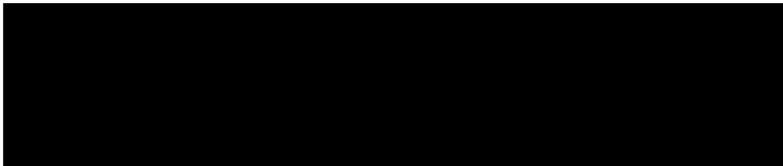
FILE: [REDACTED] Office: HELENA, MT (BOISE)

Date: JAN 17 2007

IN RE: [REDACTED]

APPLICATION: 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:



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, Helena, Montana 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 February 18, 2005. 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 June 6, 2005, or 108 days after the decision was issued. Accordingly, the appeal was untimely filed.¹

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, Boise, Idaho. *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.

¹ The AAO notes that the Form I-290B, Notice of Appeal, was filed within 33 days of the district director's denial of the applicant's Application for Adjustment of Status (form I-485). The AAO does not have jurisdiction over family-based adjustment applications. Therefore, though timely, it is not within the jurisdiction of the AAO and must be rejected for that reason as well.