



U.S. Citizenship  
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JAN 29 2007

FILE: [REDACTED]

Office: TEGUCIGALPA, HONDURAS

Date:

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 Officer in Charge, Tegucigalpa, Honduras, 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 officer in charge issued the decision on January 4, 2005. It is noted that the officer in charge properly gave notice to the applicant that he had 33 days to file the appeal. Citizenship and Immigration Services (CIS) received the appeal on February 8, 2005, or 35 days after the decision was issued. Accordingly, the appeal was untimely filed.

On appeal, counsel asserts that the applicant's spouse did not receive the decision until January 20, 2005. Counsel further states that, although she represents the applicant, she was not directly informed of the decision and did not become aware of it until January 21, 2005, when the applicant's spouse physically presented the decision to her because a decision was not issued to counsel. The record before the AAO does not, however, indicate that a Form G-28, Notice of Entry of Appearance as Attorney or Representative accompanied the Application for a Waiver of Inadmissibility (Form I-601). Counsel has also provided no evidence of delayed issuance of the decision and the record indicates that the denial was sent to the current address of the applicant's spouse.

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 officer in charge, Tegucigalpa, Honduras. *See* 8 C.F.R. § 103.5(a)(1)(ii). The officer in charge 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.