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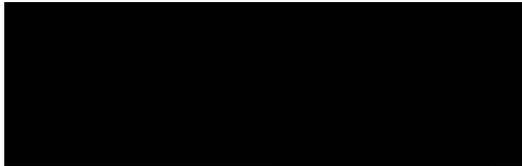
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: PHOENIX, AZ

Date: MAY 22 2007

IN RE:

Applicant:



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 waiver application was denied by the Acting District Director, Phoenix, Arizona, and 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 Acting District Director issued the decision on September 23, 2005. It is noted that the Acting District Director properly gave notice to the petitioner that it had 33 days to file the appeal. The Acting District Director indicated that the appeal was not to be sent directly to the Board of Immigration Appeals (BIA) or the Administrative Appeals Office (AAO). The Acting District Director stated that the appeal was to be sent to the Citizenship and Immigration Services (CIS) office located in Phoenix, Arizona.

The record reflects that the petitioner submitted the appeal to the AAO, which was received on October 25, 2005. The appeal was returned to the petitioner. *Administrative Appeals Office Letter dated October 25, 2005.* The petitioner submitted the appeal to CIS, which it received on November 3, 2005, or 41 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). The Acting 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.