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U.S. Citizenship
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FILE: [Redacted]

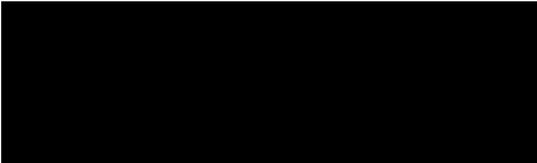
Office: ATHENS, GREECE

Date: **AUG 24 2005**

IN RE: [Redacted]

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

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, Director
Administrative Appeals Office

DISCUSSION: The Officer in Charge, Athens, Greece, denied the Application for Waiver of Grounds of Excludability Form I-601 on February 13, 2004. 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 officer in charge issued the decision on February 13, 2004 and gave notice to the applicant that he had 33 days to file the appeal. The applicant first sent his appeal directly to the AAO, which is contrary to clear instructions accompanying the Notice of Appeal I-290B. The Form I-290B instructions inform the applicant that the appeal should be sent to the office that made the decision, not to the AAO. The AAO returned the appeal to the applicant, who re-sent the appeal to the Citizenship and Immigration Services (CIS) in Athens, Greece. CIS received the appeal on May 12, 2004, or 89 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 officer in charge. *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.