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U.S. Citizenship  
and Immigration  
Services

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*Handwritten initials: HZ*

[Redacted]

FILE: [Redacted]

Office: COPENHAGEN, DENMARK

Date: SEP 02 2005

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:

[Redacted]

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*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Vice Attaché, Copenhagen, Denmark denied the Form I-601 Application for Waiver of Grounds of Inadmissibility. 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 vice attaché issued the decision on April 16, 2004. It is noted that the vice attaché properly gave notice to the applicant that he had 33 days to file the appeal. The notice also informed the applicant that the appeal was not to be sent directly to the AAO. Despite the notice, the appeal was initially sent to the AAO. Counsel sent a letter, dated May 25, 2004, to the Department of Homeland Security (DHS) in Copenhagen, Denmark in which he states that the relevant waiver application fee is enclosed. Therefore, the appeal was received by DHS on May 25, 2004, at the earliest, or 39 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 vice attaché, Copenhagen, Denmark. *See* 8 C.F.R. § 103.5(a)(1)(ii). The vice attaché 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.