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APR 28 2005

U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H4

FILE:

Office: SAN FRANCISCO, CA

Date: SEP 22 2005

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 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 District Director, San Francisco, CA 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 district director issued the decision on June 4, 2003. It is noted that the district director properly gave notice to the applicant that she had 33 days to file the appeal. The proper CIS office received the appeal on October 17, 2003, or 135 days after the decision was issued. Accordingly, the appeal was untimely filed. The AAO cannot accept the appeal as there is no provision for accepting late appeals despite the district director's motion to reopen and reconsider. The AAO notes that the district director's motion to reopen and reconsider is for the application for adjustment of status (Form I-485), not the application for waiver of grounds of inadmissibility (Form I-601).

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, San Francisco, CA. *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. However, if the district director wants to reopen the Form I-601 decision based on new information submitted on appeal, he can reopen the case and write a new decision which, if adverse to the applicant, can then be appealed to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.