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U.S. Citizenship  
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FILE:

Office: EL PASO, TEXAS

Date: MAR 31 2006

IN RE:

Applicant:



APPLICATION:

Application for Permission to Reapply for Admission into the United States after  
Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and  
Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the District Director, El Paso, Texas, 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 District Director issued the decision on May 24, 2004 and forwarded it to the applicant on June 1, 2004. It is noted that the District Director properly gave notice to the applicant that he had 33 days to file the appeal. The Notice of Appeal to the AAO (Form I-290B) was forwarded to the AAO in error. It was rejected and returned to the applicant with instructions to forward it to the El Paso, Texas district office. An appeal is not properly filed until the proper office, in this case the El Paso, Texas district office, receives it. The appeal was received by the El Paso, Texas district office on September 14, 2004, 105 days after the decision was forwarded to the applicant. Accordingly, the appeal was untimely filed.

On appeal, the applicant states that he filed the appeal late because he was not given the decision until August 13, 2004.

The regulation at 8 C.F.R. § 103.5a(b) discuss service by mail and states that service by mail is complete upon mailing. The date received is irrelevant to the 30 days (33 days when the decision was mailed) allowed to respond to an appeal.

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, El Paso, Texas. 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.

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

**ORDER:** The appeal is rejected.