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U.S. Citizenship  
and Immigration  
Services

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HA

[Redacted]

FILE:

[Redacted]

Office: DALLAS, TEXAS

Date: OCT 10 2006

IN RE:

Applicant:

[Redacted]

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:

[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, Chief  
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, Dallas, 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 December 28, 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 received by the Dallas, Texas, district office on February 1, 2005, 35 days after the decision was issued. It is noted that on appeal, counsel asserts that the District Director's decision was never served on the applicant and he did not receive a copy of the decision until January 5, 2005. The regulation at 8 C.F.R. § 103.5a(b) discuss service by mail and states that service by mail is complete upon mailing. Nothing was presented to show that the decision was mailed after December 28, 2004. 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, Dallas, 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.