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U.S. Citizenship
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FILE:

Office: ROME, ITALY

Date: MAY 18 2007

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, Chief
Administrative Appeals Office

DISCUSSION: The Acting District Director, Rome, Italy denied the waiver application and 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 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 acting district director issued the decision on June 7, 2005. It is noted that the director properly gave notice to the petitioner that he had 33 days to file the appeal and that the appeal was not to be sent directly to the AAO, but was to be mailed to the district office nearest his residence.

The AAO notes that counsel submitted a letter stating that he mailed the applicant's Form I-290B, Notice of Appeal by DHL Express shipping on June 29, 2005 directly to the AAO, but the package was delayed in transit. An appeal is not considered properly filed until it reaches the correct office, in this case the applicant's district office. The appeal was received by the district office on August 31, 2005, or 84 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 acting district director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The acting 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