U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

H1

[redacted]

FILE: [redacted] Office: LOS ANGELES, CA Date: JAN 2 6 2005

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(d)(11) of the Immigration and Nationality Act, 8 U.S.C. § 1182(d)(11)

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Los Angeles 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 of 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 interim district director issued the decision on September 5, 2003. It is noted that the interim district director properly gave notice to the applicant that he had 33 days to file the appeal. The appeal was received by Citizenship and Immigration Services on November 3, 2003, or 59 days after the decision was issued. Accordingly, the appeal was untimely filed.

The record indicates that the appeal was received by the AAO directly from the applicant prior to November 3, 2003. It is noted that the interim district director properly gave notice to the applicant that he must submit any appeal of the decision to the originating office. The appeal is not properly filed until it is received by the proper office.

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 interim district director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The interim 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.