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

[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CALIFORNIA Date: JUN 16 2004

IN RE: Applicant: [redacted]

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

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 Acting District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The record reflects that the applicant is a native and citizen of Mexico. She was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud and willful misrepresentation of a material fact. The applicant is the beneficiary of an approved Petition for Alien Relative filed by her U.S. citizen spouse. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to remain in the United States and reside with her U.S. citizen spouse and child.

The Acting District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Acting District Director Decision* dated May 30, 2003.

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 May 30, 2003. It is noted that the Acting District Director properly gave notice to the petitioner that she had 33 days to file the appeal. The Notice of Appeal to the AAO (Form I-290B) was received by Citizenship and Immigration Services (CIS) on July 24, 2003, 55 days after the decision was issued. Accordingly, the appeal was untimely filed.

On November 19, 2003, the District Director granted a Service Motion to Reopen and Reconsider the Denial of Adjustment of Status filed under section 245 of the Act. In his September 17, 2003 decision the District Director noted that the applicant had not filed an appeal of her application for waiver of inadmissibility and therefore denied the Form I-485 application for adjustment of status. After it was discovered that the applicant had filed an appeal the District Director granted the motion to reopen the Denial of Adjustment of Status application.

Even if the appeal had been forwarded to the AAO before the denial of the Form I-485 it would have been rejected as untimely filed. The motion to reopen the denial of the application to adjust status does not effect this office's adjudication of the appeal.

The regulation at 8 C.F.R. § 103.3(a)(2)(v) states in pertinent part:

B) Untimely appeal.

(1) Rejection without refund of filing fee. An appeal which is not filed within the time allowed must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

The record of proceedings reflects that the appeal of the denial of the Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Act was filed on July 24, 2003, 55 days after the decision was issued. As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.