identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
20 Mass. Ave, N.W. Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CA Date: NOV 01 2004

IN RE: [redacted]

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

ON BEHALF OF PETITIONER:

[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, Director
Administrative Appeals Office

DISCUSSION: The Application for a Waiver of Inadmissibility (Form I-601) was denied by the District Director, San Francisco, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record reflects that on April 19, 2002, the District Director found that the applicant, a native and citizen of Mexico, was inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1182(a)(2)(A)(i)(I), as an alien who has been convicted of crimes involving moral turpitude (two convictions for unlawful entry of a motor vehicle with intent to commit larceny or any felony). The District Director advised the applicant of his ability to seek a waiver of inadmissibility. The applicant filed the Form I-601 on June 2, 2002, pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to permit the applicant to adjust his status and remain in the United States with his U.S. citizen spouse and child. On June 7, 2002, the applicant's waiver application was denied by the District Director on the basis that the applicant had failed to establish that extreme hardship would be imposed on the U.S. citizen spouse and child. *Decision of the District Director,* dated June 7, 2002. The applicant's counsel subsequently submitted an appeal from the District Director's decision on Form I-290B which was received on July 14, 2002, and feed-in on July 15, 2002.

The applicant's submission will be rejected. 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).[1]

The record indicates that the District Director issued the decision on June 7, 2002. It is noted that the decision properly gave notice to the petitioner that he had 33 days to file the appeal. Although the applicant's counsel submitted the Form I-290B to Citizenship and Immigration Services (CIS), the submission was not received until July 14, 2002, 37 days after the date of the CIS decision. Accordingly, the appeal was untimely filed and must be rejected.

ORDER: The appeal is rejected.

---

[1] Counsel's statement in support of the appeal asserts that the applicant and his wife were unaware of the criteria regarding the waiver and thus seeks to have the submission treated as a motion for reconsideration. However, such a request is likewise untimely, as the regulations also require that a motion to reopen or reconsider be filed within thirty days of the decision. While this time may be excused by CIS in its discretion, counsel's submission has failed to satisfy the applicable criteria.