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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: LOS ANGELES DISTRICT OFFICE Date OCT 26 2004

IN RE: [redacted]

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

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, Director
Administrative Appeals Office

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The waiver application was denied by the District Director, Los Angeles. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

Regulations governing these proceedings, at 8 C.F.R. § 103.3(a)(2)(i), provide that the affected party must properly file a 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 district director issued the decision on September 22, 2003. It is noted that the director properly gave notice to the applicant that an appeal must be filed within 33 days. The period for filing a timely appeal expired on October 25, 2003. The applicant's appeal was filed on October 27, 2003. Accordingly, the appeal was not filed timely and is subject to dismissal pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

The regulations further provide, at 8 C.F.R. § 103.3(a)(2)(v)(B)(2), that if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider under 8 C.F.R. § 103.5(a)(2) or (3), respectively, 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. *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.