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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: LAS VEGAS, NEVADA Date:

IN RE: Applicant: [redacted] AUG 09 2004

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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

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identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

The applicant is a native and a citizen of Mexico who was present in the United States without a lawful admission or parole on January 1, 1997. On May 22, 2003, the applicant was removed from the United States pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(A)(i) for having been present in the United States without being admitted or paroled. The applicant is inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii). He seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii) in order to enter the United States and reside with his spouse and U.S. citizen children.

The District Director determined that on the Form I-212 the applicant failed to state the status he would adjust to if permitted to reenter the United States. In addition the District Director determined that the applicant does not have any application or petition filed on his behalf pending with Citizenship and Immigration Service (CIS). The District Director denied the application accordingly. *See District Director Decision* dated September 10, 2003.

The regulation at 8 C.F.R. 103.3(a)(2)(i) indicates that appeals must be made within 30 days after service of the decision (33 days if the notice was delivered by mail). The record indicates that the decision was mailed on September 13, 2003. The appeal was received on October 21, 2003, 38 days after the decision was mailed. Thus, the appeal was not timely filed.

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.

As the appeal was untimely filed and the applicant has failed to provided any new facts or evidence that support a motion to reopen, the appeal must be rejected.

ORDER: The appeal is rejected as untimely filed.