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**U.S. Citizenship
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Services**

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FILE:



Office: FRANKFURT, GERMANY

Date:

NOV 18 2005

IN RE:



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:



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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Frankfurt, Germany, 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 officer in charge issued the decision on April 21, 2004. It is noted that the officer in charge 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 June 1, 2004, or 41 days after the decision was issued. Accordingly, the appeal was untimely filed.

The AAO notes that, although briefs and additional evidence can be filed at a later point in the time, the Form I-290B appeal must be filed within the 33 days allotted. The AAO acknowledges that counsel submitted a brief and evidence which was received by CIS on May 26, 2004, prior to the applicant's filing of the Form I-290B. The AAO finds however that a completed Form I-290B did not accompany counsel's submission and that the submission was received 35 days after the decision was issued.

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 officer in charge. *See* 8 C.F.R. § 103.5(a)(1)(ii). The officer in charge 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.