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**U.S. Citizenship
and Immigration
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File: [Redacted] Office: LOS ANGELES (SANTA ANA) Date: **AUG 08 2006**

IN RE: Applicant: [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)

IN 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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles, 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 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). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a CIS office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the district director issued the decision denying the Form I-601 waiver application on November 24, 2004. It is noted that the district director properly gave notice to the applicant that he had 33 days to file the appeal. According to the date stamp on the Form I-290B Notice of Appeal, it was received by CIS on February 15, 2005, or 83 days after the decision was issued. Accordingly, the appeal was untimely filed. Pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(i), the AAO lacks discretion to accept a late appeal.

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 district director. *See* 8 C.F.R. § 103.5(a)(1)(ii).

The record reflects that the applicant filed a motion to reopen and reconsider his Form I-485, Application to Register Permanent Resident or Adjust Status, on January 19, 2005. The district director granted the motion on March 10, 2005, yet failed to issue a new decision on the merits of the applicant's Form I-485 application. In her decision, the district director referenced the applicant's Form I-290B appeal from the denial of his Form I-601 waiver application, and noted that "the case will be reopen [sic] for appeal on applicant benefit since the Form I-290B was properly filed and feed in." *Decision of the District Director on Motion to Reopen or Reconsider*, dated March 10, 2005. The district director further vacated the denial of the applicant's Form I-485 application, ostensibly reserving decision on the Form I-485 application pending the outcome of the appeal of the applicant's Form I-601 application before the AAO. *See id.* at 2. The matter was forwarded to the AAO for review and adjudication.

As discussed above, the applicant's Form I-290B appeal was untimely filed, and the AAO lacks discretion to accept a late appeal. 8 C.F.R. § 103.3(a)(2)(i). The district director's decision on the applicant's motion to reopen and reconsider the Form I-485 application does not afford the AAO jurisdiction to decide the appeal of the Form I-601 application for a waiver. *See id.* Nor does the AAO have jurisdiction to render an opinion on the merits of a Form I-485 application. As the district director is the official who made the last decision on the applicant's Form I-485, only she may properly issue a new decision on the applicant's motion as constituted.

It is noted that, although the applicant filed a motion regarding his Form I-485 application, he has not filed a motion to reopen or reconsider the denial of his Form I-601 application for a waiver. Should the applicant file

such a motion, and should the district director subsequently issue a denial, the applicant may then appeal the denial of the motion to the AAO.

However, as the present appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.