

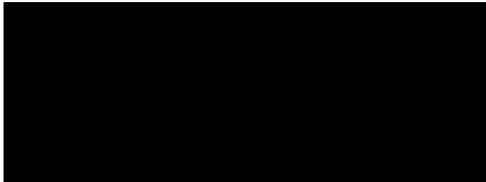
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U.S. Department of Homeland Security  
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U.S. Citizenship  
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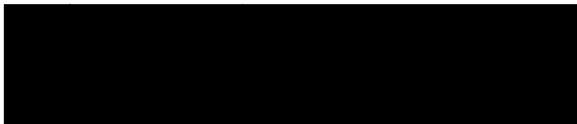
FILE: [Redacted] Office: FRANKFURT, GERMANY

Date: JUN 05 2007

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v).

ON BEHALF OF APPLICANT:



**STATIC COPY**

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 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 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 OIC issued the decision on March 16, 2006. It is noted that the OIC properly gave notice to the applicant that he had 33 days to file the appeal. The appeal was received by Citizenship and Immigration Services (CIS) on July 18, 2006, or 124 days after the decision was issued. Accordingly, the appeal was untimely filed.

Counsel states that the decision was issued on May 16, 2006, but is mistakenly shown as rendered on March 16, 2006. Counsel further states that the CIS office located in Frankfurt, Germany, indicated that the appeal would be accepted outside of the 30-day filing period. It is noted that even if the decision was actually dated May 16, 2006, the date the appeal was received by CIS, which is July 18, 2006, is more than 30 days after that date. Furthermore, the Frankfurt office does not have the authority to circumvent the regulations and authorize a late filing of an 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 OIC. *See* 8 C.F.R. § 103.5(a)(1)(ii). The OIC 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.