

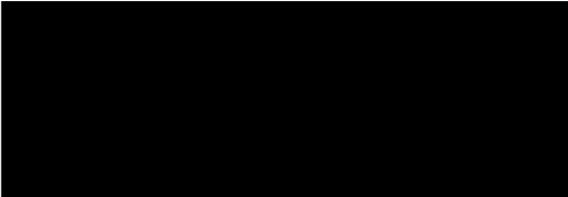


U.S. Citizenship
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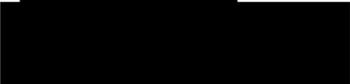
FILE:



Office: LIMA, PERU

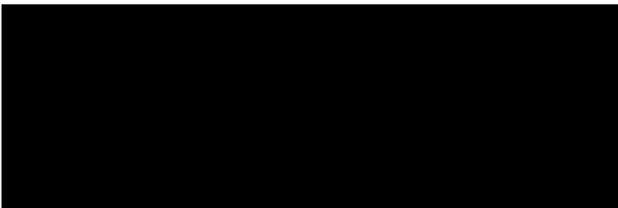
Date: MAR 16 2007

IN RE:



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

ON BEHALF OF APPLICANT:



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, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Officer in Charge, Lima, Peru, and is now on appeal before the Administrative Appeals Office (AAO). The appeal will be rejected.

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).

The record indicates that the Officer in Charge issued the decision on September 19, 2001. It is noted that the Officer in Charge properly gave notice to the petitioner that she had 33 days to file the appeal and that the appeal was to be sent directly to the U.S. Embassy in Lima, Peru.

The petitioner incorrectly filed the appeal directly with the Administrative Appeals Unit (now Administrative Appeals Office) in Washington, DC on October 17, 2001. *See photocopy of FedEx label.* As this appeal was filed at the wrong location, it cannot be considered to be properly filed. On August 2, 2005, the petitioner submitted a Form I-290B to the U.S Embassy in Lima, Peru appealing the decision dated September 19, 2001. This appeal was submitted nearly four years after the decision made by the Officer in Charge. Accordingly, the appeal was untimely filed.

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 incorrectly filed, the appeal must be rejected.

ORDER: The appeal is rejected.