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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

Hy



FILE:



Office: MIAMI, FLORIDA

Date: OCT 23 2006

IN RE:

Applicant:



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:



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 for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) was denied by the Acting District Director, Miami, Florida, 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 Acting District Director issued the decision on October 5, 2005. It is noted that the Acting District Director properly gave notice to the applicant that he had 33 days to file the appeal. The Notice of Appeal to the AAO (Form I-290B) was received by the Miami, Florida District Office on November 9, 2005, 35 days after the decision was issued. It was rejected and returned to the attorney because a Notice of Entry of Appearance as Attorney or Representative (Form G-28) was not included.

The Form I-290B along with a Form G-28 was resubmitted to the Miami, Florida District Office. The district office received the appeal on November 29, 2005, 54 days after the decision was issued. 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 Acting District Director, Miami, Florida. See 8 C.F.R. § 103.5(a)(1)(ii). The Acting District Director 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.