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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]

Office: MIAMI, FLORIDA

Date: **AUG 22 2006**

IN RE:

Applicant:

[REDACTED]

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

ON BEHALF OF APPLICANT:

[REDACTED]

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 a Waiver of Inadmissibility was denied by the District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record reflects that on November 16, 2004, the district director found that the applicant was inadmissible to the U.S. pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), as an alien who attempted to procure a benefit under the Act by fraud or willful misrepresentation. The district director found that the applicant had failed to establish that her spouse would experience extreme hardship on account of her inadmissibility, and he denied the waiver application.

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 district director issued the decision on November 16, 2004 and gave notice to the applicant that she had 33 days to file the appeal. Counsel first erroneously sent the appeal to the AAO rather than to the Miami District Office, as instructed on the cover sheet of the Form I-292. Counsel re-sent the appeal to Citizenship and Immigration Services (CIS) in Miami on January 5, 2005; however, CIS returned the appeal to counsel, because the money order was unclear. CIS received the properly filed appeal on January 13, 2005, or 58 days after the decision was issued. Therefore, 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 district director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The 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.