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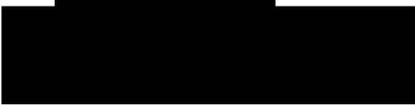
**DEC 12 2006**

FILE:

Office: FRANKFURT, GERMANY

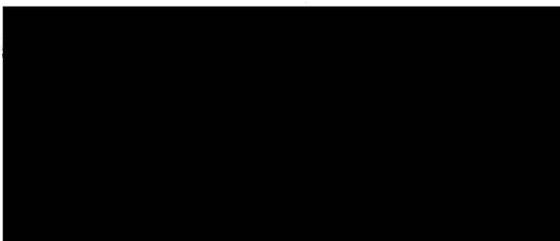
Date:

IN RE:



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

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 waiver application was denied by the Officer-in-Charge (OIC), Frankfurt, Germany. The matter 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 Code of Federal Regulations (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 OIC issued the decision on May 12, 2006. *Form I-292*, May 12, 2006. It is noted that the OIC properly gave notice to the applicant that she had 33 days to file the appeal and that the appeal must be submitted to U.S. Citizenship and Immigration Services (CIS), Frankfurt. However, the appeal was sent in error to the AAO in Washington, DC. The appeal was not received by CIS Frankfurt until July 10, 2006, or 59 days after the decision was issued. Accordingly, the appeal was untimely filed.

Along with the Notice of Appeal, counsel for the applicant submitted a letter to CIS Frankfurt indicating that the appeal had been filed on a timely basis with the AAO and that the Form I-292 issued by Frankfurt "clearly indicated that the Notice of Appeal must be made to the OAA in Washington, DC." Contrary to this assertion, the AAO notes that the relevant language on the Form I-292 issued by Frankfurt in this case states:

You may if you wish appeal this decision. You must submit such an appeal to **THIS OFFICE** with a filing fee of \$385 and completed Form I-290B . . . (emphasis in the original).

Appeal in your case may be made to:

....

The Office of Administrative Appeals (OAA) in Washington, D.C. It must reach this office within 30 calendar days from the date this notice is served (33 days if this notice is mailed).

Do **NOT** send your appeal directly to the Board or to the OAA . . . (emphasis in the original).

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 in Frankfurt. *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.