



U.S. Citizenship
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Services

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FILE:

Office: NEW DELHI, INDIA

Date: MAR 29 2006

IN RE:

Applicant:



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:

SELF-REPRESENTED

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, Director
Administrative Appeals Office

DISCUSSION: The Application for a Waiver of Inadmissibility was denied by the Acting Officer in Charge, New Delhi, India, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The record reflects that on July 30, 1997, the acting officer in charge 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 has procured admittance to the United States by fraud or misrepresentation. The applicant used a Bangladeshi passport belonging to another individual in order to gain admittance to the United States on or about July 11, 1987. The district director concluded that the applicant had failed to establish that her husband would experience extreme hardship on account of her inadmissibility.

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 officer in charge issued the decision on July 30, 1997 and gave notice to the applicant that she had 33 days to file the appeal. The applicant filed her appeal on August 25, 2004, over seven years later. Accordingly, the appeal was untimely filed.

A consular memo dated September 30, 2004 notes that the applicant stated that neither she nor her husband had received any denial of her application for a waiver of inadmissibility. Nevertheless, the decision was sent to the applicant's address of record, and the applicant was unable to explain to the consular officer why she had delayed so many years in making an inquiry.

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 officer in charge. *See* 8 C.F.R. § 103.5(a)(1)(ii). The acting officer in charge 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.