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U.S. Citizenship
and Immigration
Services

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FILE:

Office: ATLANTA, GEORGIA

Date: SEP 27 2006

IN RE:

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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Atlanta, Georgia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The applicant is a native and citizen of Ghana who is the beneficiary of an approved petition for alien relative. He applied to adjust his status to that of lawful permanent resident, but the district director found him to be inadmissible to the United States under § 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1182(a)(2)(A)(i)(I), as an alien who has committed a crime involving moral turpitude. The applicant sought a waiver of inadmissibility pursuant to § 212(h) of the Act, but the district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly.

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 December 21, 2004 and gave notice to the applicant that she had 33 days to file the appeal. Citizenship and Immigration Services received the appeal on January 25, 2005, or 35 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.