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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: BALTIMORE, MARYLAND Date: FEB 13 2007

IN RE: Applicant: [Redacted]

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

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

The AAO notes that the applicant's appeal was not timely 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 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 District Director issued the decision on October 15, 2004. It is noted that the District Director properly gave notice to the applicant that she had 33 days to file the appeal. The appeal was received by Citizenship and Immigration Services (CIS) on December 13, 2004, or 58 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 official who made the last decision was the District Director, Baltimore, Maryland. *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.

The AAO notes that counsel asserts the appeal was filed on November 16, 2004. He states he "was advised by the officer that [he] must now make appointment [sic] to file applications. However, she took the application and advised [him] that [he] would receive a receipt in the mail." *See letter from S. Eric Shakir*, dated January 26, 2005. The record of proceedings does not contain any "applications" that were filed in November 2004 and counsel failed to provide any evidence that any documents were filed on November 16, 2004.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.