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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship and Immigration Services

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FILE:

Office: LOS ANGELES, CALIFORNIA

Date:

~~03 16 2011~~

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, California, and 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 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 February 9, 2005 and gave notice to the applicant that he had 33 days to file the appeal. In her cover letter attached to the denial, the district director specified in bold print that the appeal was to be sent back to the Los Angeles Citizenship and Immigration Services (CIS) district office, the address of which appears at the top of the cover letter. The applicant instead sent the appeal to the California Service Center (CSC) in Laguna Niguel, where it was received on March 24, 2005, or 43 days after the decision was issued. The CSC then forwarded the appeal to the Los Angeles district office on April 29, 2005. Thus, due to the applicant's error, CIS did not receive the appeal within 33 days after February 9, 2005.

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.