



U.S. Citizenship
and Immigration
Services

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FILE:

Office: LOS ANGELES, CA

Date: MAR 20 2006

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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, Director
Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, CA denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) in Washington, DC on appeal. The appeal will be rejected as untimely filed.

8 C.F.R. § 103.3(a)(2)(i) provides that, for an appeal to be timely filed, the affected party must file the complete appeal within 30 days after service of the unfavorable decision. 8 C.F.R. § 103.5a(a)(2)(iv) defines “personal service” as including, “[m]ailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.” The decision of the district director is dated August 18, 2004. *See, Decision of the District Director.* A copy of a certified mail receipt, indicating that United States Citizenship and Immigration Services, Santa Ana (USCIS) mailed the decision to the applicant, and that the applicant’s spouse signed receipt for that mail on August 23, 2004, is part of the record. The date that the mail was received and signed for by the applicant’s wife is not relevant. 8 C.F.R. § 103.5a(b) states:

Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, 3 days shall be added to the prescribed period. *Service by mail is complete upon mailing.* (Emphasis added).

The applicant was properly notified that the Notice of Appeal must reach USCIS within 33 days from the date of the Notice of Decision if the notice was mailed. *See, Decision of the District Director.* Counsel indicates that USCIS received the applicant’s Notice of Appeal on September 17, 2004. *Brief, P.1.* However, while September 17, 2004 would have been timely, there is no evidence in the record to support counsel’s statement that the Notice of Appeal was received by USCIS on that day. A copy of a letter to the applicant from the district director indicates that the appeal was received on September 21, 2004 and transferred to the Administrative Appeals Office on September 22, 2004. The receipt date on the Notice of Appeal is September 22, 2004. Nothing in the record supports the statement in the brief or indicates that the appeal was received before September 21, 2004. Tuesday, September 21, 2004 was 34 days after August 18, 2004. Therefore, the appeal is untimely, as it was not received by USCIS within 33 days of the date of service of the decision.

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 director did not treat the late appeal as either a motion to reopen or reconsider and forwarded the matter to the AAO.

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

ORDER: The appeal is rejected.