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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]

Office: COPENHAGEN, DENMARK

Date:

JAN 08 2007

IN RE: Applicant: [REDACTED]

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

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.

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for a Waiver of Inadmissibility was denied by the Interim Attache, Copenhagen, Denmark, 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 interim attache issued the decision on April 8, 2005 and gave notice to the applicant that she had 33 days to file the appeal. The USCIS office in Copenhagen received the appeal on July 6, 2005, or 89 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 interim attache. See 8 C.F.R. § 103.5(a)(1)(ii). The interim attache 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.¹

ORDER: The appeal is rejected.

¹ The AAO notes that the interim attache found that the applicant was inadmissible to the U.S. pursuant to § 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and applying for admission within ten years from the date of her last departure. The interim attache wrote that the applicant had entered the United States pursuant to the Visa Waiver Pilot program on September 8, 2000, and that she was authorized to remain in the United States until December 7, 2000, but instead she departed the United States on December 5, 2001. It thus appears that the applicant's period of unlawful presence (from December 7, 2000 to December 5, 2001) was less than one year, such that the applicant was inadmissible pursuant to § 212(a)(9)(B)(i)(I) of the Act for a period of only three years (rather than ten) from the date of her last departure from the United States.