



U.S. Citizenship  
and Immigration  
Services

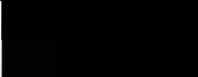
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FILE:



Office: TEGUCIGALPA, HONDURAS Date:

JAN 29 2007

IN RE:



APPLICATION:

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

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 Interim Attaché for Citizenship and Immigration Services (CIS), Tegucigalpa, Honduras, denied the waiver application. The matter 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 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 interim attaché issued the decision on September 16, 2004. It is noted that the interim attaché properly gave notice to the applicant that he had 33 days to file the appeal. CIS received the appeal on November 15, 2004, or 60 days after the decision was issued. Accordingly, the appeal was untimely filed.

On appeal, counsel asserts that she did not receive the decision until September 23, 2004. Counsel provided no evidence of delayed issuance of the decision and the record indicates that the denial was sent to counsel's current address. On appeal, counsel asserts that the Form I-290B was filed on October 14, 2004 by priority mail, return receipt requested. Counsel submits a copy of the mailing receipt for the Form I-290B, indicating that the Form I-290B was mailed on October 14, 2004. In order to be properly filed the Form I-290B must be *received* by the office that issued the decision within the allotted time. Counsel provided no evidence that the Form I-290B was *received* by CIS within the allotted time and CIS records indicate that CIS did not receive the Form I-290B until 60 days after the decision was issued.

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 attaché, Tegucigalpa, Honduras. *See* 8 C.F.R. § 103.5(a)(1)(ii). The interim attaché 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.