



U.S. Citizenship
and Immigration
Services

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FILE:



Office: BALTIMORE, MD

Date: **MAY 15 2007**

IN RE:



APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

ON BEHALF OF PETITIONER:



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 application was denied by the Interim District Director, Baltimore, Maryland. 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 District Director issued the decision on August 1, 2003. It is noted that the Interim District Director properly gave notice to the applicant that he had 33 days to file the appeal. The appeal was properly filed with the district office in Baltimore, Maryland on September 10, 2003, or 40 days after the decision was issued. Accordingly, the appeal was untimely filed. The AAO notes that counsel for the applicant stated that the district office in Baltimore incorrectly mailed the decision to her former address, causing her not to receive the decision until September 2, 2003. Counsel also stated that she had notified the office numerous times of her new address. The record notes that the decision was mailed to the applicant and there is no indication that this was not the correct address for him. It was the applicant's responsibility to file the appeal and he did not do so in a timely fashion.

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 District Director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The Interim 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.