



[REDACTED]

H6

DATE: **DEC 19 2012** OFFICE: CHULA VISTA, CALIFORNIA

File: [REDACTED]

IN RE: Applicant: [REDACTED]

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:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Chula Vista, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that an affected party must file a complete appeal within 30 days after service of an unfavorable decision. If the decision is mailed, the 30-day period for submitting an appeal begins three days after it is mailed. 8 C.F.R. § 103.8(b). The date of filing is the date of actual receipt of the appeal, not the date of mailing. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record reflects that the District Director sent his decision on May 20, 2011, to the applicant at his spouse's address of record. It is noted that the District Director stated that the applicant had 30 days to file an appeal on Form I-290B, Notice of Appeal or Motion (Form I-290B) with the District Director's office. Although counsel dated the Form I-290B on June 13, 2011,<sup>1</sup> the completed Form I-290B was received by the District Director's office on July 7, 2011; 49 days from the date that U.S. Citizenship and Immigration Services (USCIS) issued its decision. Therefore, the appeal was untimely filed and must be rejected.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the time limit for filing an appeal. However, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) provides that, if an untimely appeal meets the requirements of a motion to reopen as described in 8 C.F.R. § 103.5(a)(2) or a motion to reconsider as described in 8 C.F.R. § 103.5(a)(3), 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, Chula Vista, California. *See* 8 C.F.R. § 103.5(a)(1)(ii). In the present matter, the District Director determined that the appeal does not meet the requirements of a motion to reopen or motion to reconsider.

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

**ORDER:** The appeal is rejected.

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<sup>1</sup> The AAO notes that the record includes a USCIS letter issued to counsel on June 22, 2011, indicating that the applicant's Form I-290B was being "returned for correction/completion" as the applicant "did not complete I-290B form. Due date was [June 22, 2011]."