



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

identifying data deleted to
prevent clear, unwarranted
invasion of personal privacy



EL

FILE:



Office: SAN FRANCISCO, CA

Date: FEB 27 2007

IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship pursuant to Former Section 322 of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1433

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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, Chief
Administrative Appeals Office

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

The record reflects that the applicant was born on June 17, 1983 in India. Both of the applicant's parents are naturalized U.S. citizens. The applicant's father, [REDACTED] became a U.S. citizen on January 8, 2002; the applicant's mother, [REDACTED], on June 28, 2001. The applicant seeks a certificate of citizenship based on the naturalization of his mother under former section 322 of the Immigration and Nationality Act (the Act), as amended.

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 with the office that issued the denial within 30 days of service of the decision. If the decision is mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the director issued his decision on February 11, 2005 and notified the applicant that he had 30 days, 33 days if the decision was mailed, to file an appeal. The applicant did not file the Form I-290B, Notice of Appeal to the Administrative Appeals Office, with the San Francisco district office, but submitted it directly to the AAO.¹ Accordingly, the appeal did not reach the San Francisco district office until April 1, 2005, 49 days after the director's denial of the application. Therefore, the applicant has not met the filing requirements for an appeal.

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 district director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director declined to treat the late appeal as a motion and forwarded the matter to the AAO. Accordingly, the appeal will be rejected as untimely filed.

ORDER: The appeal is rejected.

¹ Even if the AAO had been the appropriate office to receive the appeal, the Form I-290B would still have been untimely filed as it did not reach the AAO until March 24, 2005, 41 days after the director's denial of the application.