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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



FILE: [REDACTED] Office: New York

Date:

JUN 11 2001

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 341(a) of the Immigration and Nationality Act, 8 U.S.C. 1452(a)

IN BEHALF OF APPLICANT: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed with 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, New York, New York, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be rejected, and the matter will be remanded.

The applicant was born on July 27, 1945, in Poland. The applicant's father, [REDACTED] was born in May 1895 in Poland and never became a U.S. citizen. The applicant's mother, [REDACTED], was born in the United States in June 1900. The applicant indicates that her parents married each other on an unspecified date. The applicant was lawfully admitted for permanent residence in February 1989. The applicant is seeking a certificate of citizenship under section 201(g) of the Nationality Act of 1940 (NA 1940), based on her claim that she acquired U.S. citizenship at birth through her mother; or under § 205 of NA 1940 if her parents were not married at the time of her birth. [REDACTED] 16 I&N Dec. 84 (BIA 1976).

The district director denied the application pursuant to 8 C.F.R. 103.2(b)(13) [abandonment] because the applicant failed to submit certain documentation.

On appeal, the applicant states that the decision fails to specify any date when she was scheduled to appear for an examination. The applicant states that she did her best to fulfill the procedural requirements.

8 C.F.R. 103.2(b)(13) provides that if all requested initial evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under 8 C.F.R. 103.5.

In the present case, the original decision to deny the application was not appealable to the AAO, however, it is noted that in the district director's denial letter, he erroneously informed the applicant that she had 30 days to file an appeal (33 days if the notice was delivered by mail). The district director's error, however, does not, and cannot, supersede the regulation regarding the ability of the AAO to consider the appeal.

Accordingly, in order for the Service to consider the applicant's argument, this case will be remanded to the director to treat the appeal as a motion. The district director may request any additional evidence deemed necessary to assist her with the determination. As always in these proceedings, the burden of proof rests solely with the applicant. Section 291 of the Act, 8 U.S.C. 1361.

**ORDER:** The appeal is rejected.