



E2

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

Public Copy



JUN 18 2001

FILE: [Redacted]

Office: New York

Date:

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

identification data deleted to prevent clearly unwarranted invasion of personal privacy.

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.

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 case will be remanded to the district director for further action.

The applicant was born on August 16, 1985, in the Dominican Republic. The applicant's father, [REDACTED], was born in the Dominican Republic in 1960 and became a naturalized U.S. citizen on March 1, 1995. The applicant's mother, [REDACTED], was born in the Dominican Republic in 1963 and never had a claim to United States citizenship. The applicant's parents married each other in March 1985 and divorced in 1986. The applicant was lawfully admitted for permanent residence on October 6, 1992. The applicant is seeking a certificate of citizenship under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1433.

The district director denied the application pursuant to 8 C.F.R. 103.2(b)(13) [abandonment]. In his denial letter, the district director informed the applicant that she could appeal the decision to the Administrative Appeals Office (AAO) on a Form I-290B, Notice of Appeal.

On appeal, the applicant's father states that he brought the requested documentation to the Service office on May 12, 2000, and after speaking to [REDACTED] he left the paperwork with the receptionist/secretary. The applicant's father states that he showed the original papers to the receptionist/secretary and, after reviewing them, she stated that the papers were fine and he would be receiving a letter in the mail for another appointment. The applicant's father asserts that the next item he received in the mail was the Service's decision denying his daughter's application. He indicates that he returned to the Service office and spoke with Ms. Bravo who apologized for the inconvenience and said that sometimes papers do get lost.

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 he 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 district 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. The case is remanded to the director for further action.

