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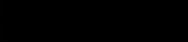
U.S. Department of Justice

Immigration and Naturalization Service

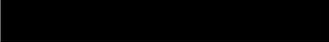
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



Public Copy

FILE:  Office: New York

Date: JUN 18 2001

IN RE: Applicant: 

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:

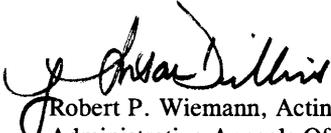
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

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 within 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 appeal will be rejected, and the case will be remanded to the district director for further action.

The applicant was born on June 8, 1982, in the Dominican Republic. The applicant's father, [REDACTED], was born in 1950 in the Dominican Republic and became a naturalized U.S. citizen on an unspecified date. The applicant's mother, [REDACTED] was born in the Dominican Republic in 1955 and never had a claim to United States citizenship. The applicant's parents married each other in December 1983. The applicant was lawfully admitted for permanent residence in 1990. 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 due to lack of prosecution because the applicant failed to submit the requested documentation.

On appeal, the applicant's father discusses the events related to the failure of the Service to receive the requested documentation. The applicant's father states that he made copies of the required documents and gave them to one of the secretaries on the floor where interviews were being conducted. The applicant's father states that, if any mistake was made, it was not his or the applicant's.

The record reflects that on March 20, 2000, 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.

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 counsel'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 him 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.

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