



U.S. Citizenship
and Immigration
Services

12



FILE:



Office: NEW YORK, NEW YORK Date:

NOV 05 2004

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 321 of the former Immigration and Nationality Act; 8 U.S.C. § 1432.

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The waiver application was denied by the Interim District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record reflects that the applicant was born on March 29, 1968, in Kosovo, Albania (former Yugoslavia). The applicant's father, [REDACTED] was born in Kosovo, Albania (former Yugoslavia) on March 13, 1941, and he became a naturalized U.S. citizen on July 31, 1985, when the applicant was seventeen years old. The applicant's mother, [REDACTED] was born in Albania (former Yugoslavia) on June 28, 1943, and she became a naturalized U.S. citizen on August 2, 1993, when the applicant was twenty-five years old. The applicant's parents were married on November 5, 1964. The applicant seeks a certificate of citizenship pursuant to section 321 of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1432, based on the claim that he acquired U.S. citizenship in 1985, through his father.

The interim district director determined that the applicant was ineligible for U.S. citizenship under section 321 of the former Act because his parents were not legally divorced or separated prior to the applicant's eighteenth birthday. The application was denied accordingly.

In an appeal dated December 28, 2003, and stamped received on February 3, 2004, the applicant asserts that his parents were legally separated prior to the applicant's eighteenth birthday, and that he is entitled to U.S. citizenship through his father. The applicant asserts that he is involved in a habeas corpus civil court action, and that although his AAO appeal is untimely, he was only informed by U.S. attorneys and court personnel in September 2003 and again in December 2003, that it would be advisable to exhaust his administrative remedies with the Administrative Appeal Office.

The interim district director's decision states clearly that the appeal of an unfavorable decision must be made to the AAO within 30 calendar days of the decision (33 days if the decision is mailed).

Moreover, 8 C.F.R. § 103.3(a)(2)(v)(B)(1), provides, in pertinent part, that, "[a]n appeal which is not filed within the time allowed **must** be rejected as improperly filed." (Emphasis added).

The interim district director's decision denying the application is dated July 8, 2003. The record reflects, however, that the applicant's was dated December 28, 2003, and that it was received on February 12, 2004, well after the 30 (33) days allowed for filing. The appeal will therefore be rejected as improperly filed.

The AAO has no discretion in receiving a late appeal. However, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) allows for a late appeal to be treated as a motion. Jurisdiction for this decision is with the interim district director.

ORDER: The appeal is rejected.