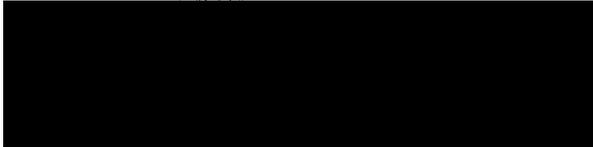


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**U.S. Citizenship
and Immigration
Services**

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



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FILE:



Office: DALLAS, TEXAS

Date: **AUG 18 2005**

IN RE:

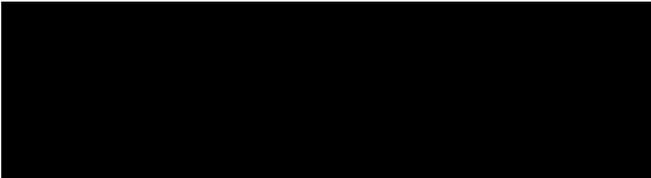
Applicant:



APPLICATION:

Application for Certificate of Citizenship under § 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431.

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

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

The record reflects that the applicant filed a Form N-600 Application for Certificate of Citizenship on August 29, 2003. The applicant seeks a certificate of U.S. citizenship under § 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431. On December 24, 2003, the interim district director concluded that the applicant did not meet the definition of "child" set forth in § 101(b)(1)(E)(i) of the Act, 8 U.S.C. § 1101(b)(1)(E)(i) because she had not been residing in the legal custody of her U.S. citizen parent for two years at the time of the decision. The interim district director also noted that the applicant had not been admitted to the United States as a lawful permanent resident. The application was denied accordingly.

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 within 30 days of after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The record indicates that the applicant was notified of this requirement. Counsel for the applicant sent a Notice of Appeal in a timely manner but failed to include the filing fee on account of his disagreement with the interim district director's decision. The interim district director denied counsel's request for a fee waiver, and counsel subsequently submitted the appeal and the fee on April 7, 2004. Citizenship and Immigration Services (CIS) thus received the complete appeal 105 days after mailing the denial to the applicant and counsel. Accordingly, the appeal was untimely filed.

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 interim district director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The AAO does not have jurisdiction to entertain a motion or an appeal after the late filing of an appeal.

ORDER: The appeal is rejected as untimely filed.