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

E2



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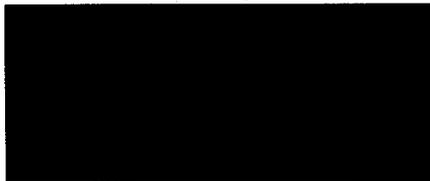
Office: NEW YORK, NEW YORK

Date: **OCT 25 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 District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The record reflects that the applicant was born in Egypt on November 14, 1988. The applicant's father became a naturalized U.S. citizen on June 14, 2002, when the applicant was thirteen years old. The applicant's mother is not a U.S. citizen. The applicant's parents were married at the time the applicant was born, but they divorced in New York on April 7, 1994. The applicant was admitted into the United States as a lawful permanent resident on January 24, 1999, when he was ten years old. He seeks a certificate of citizenship under § 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

The district director concluded that the applicant had failed to establish he resided in the U.S. in the legal and physical custody of his U.S. citizen parent, as required by § 320 of the Act. The application was denied accordingly. On appeal, counsel asserts that although the divorce decree between the applicant's parents awards physical custody to the applicant's mother, the applicant's father assumed physical custody prior to the applicant's eighteenth birthday when the applicant immigrated to the United States.

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 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 director issued the decision on June 3, 2004 and gave notice to the applicant that he had 33 days to file the appeal. Citizenship and Immigration Services (CIS) received a request for hearing (Form N-336) on June 30, 2004; however, a request for hearing filed on Form N-336 is not an appeal, and it should have been rejected by the district director. Because the district director forwarded the file to the AAO, the AAO requested from the applicant a Notice of Appeal (Form I-290B). The AAO received the Notice of Appeal on June 6, 2005, nearly one year after the denial decision was issued. 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 district director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The district director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.