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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

*Ez*

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FILE:



OFFICE: TEXAS SERVICE CENTER Date:

AUG 28 2006

IN RE:

APPLICANT:



APPLICATION: Application for Certificate of Citizenship pursuant to Section 309(c) of the Immigration and Nationality Act; 8 U.S.C. § 1409(c).

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

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 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). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a Citizenship and Immigration Services (CIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the director issued the decision on March 29, 2006. It is noted that the director gave notice to the applicant that she had a limited time in which to properly file the appeal.<sup>1</sup> According to the date stamp on the Form I-290B Notice of Appeal, it was received by CIS on May 2, 2006, 34 days after the decision was issued. Accordingly, the appeal was untimely filed. Pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(i), the AAO lacks discretion to accept a late appeal.

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 director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The 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.

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<sup>1</sup> The director indicated in his decision that the applicant had 15 days from the date of the decision to file an appeal. However, pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(i) the applicant had 30 days (33 days in the present matter as the decision was served by mail.) As the applicant failed to properly file an appeal within 33 days of the date of the decision, and her appeal was not rejected based on a failure to appeal within 15 days, she was not prejudiced by the director's erroneously cited deadline.