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

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[REDACTED]

FILE: [REDACTED] OFFICE: HARLINGEN, TX Date: MAY 30 2006

IN RE: APPLICANT: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act, 8 U.S.C. § 1401.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 application was denied by the District Director, Harlingen, Texas. 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 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 district director issued the decision on January 24, 2005. It is noted that the district director properly gave notice to the applicant that she had 33 days to file the appeal. The Notice of Appeal to the AAO (Form I-290B) was sent to the AAO in error. An appeal is not properly filed until the proper office, in this case the Harlingen, Texas District Office, receives it. The appeal was received by the Harlingen, Texas District Office on March 8, 2005, more than 33 days after the 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. 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.