



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



EV

FILE: [Redacted] Office: PHILADELPHIA, PENNSYLVANIA Date: **MAR 20 2006**

IN RE: Applicant: [Redacted]

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

ON BEHALF OF APPLICANT:
[Redacted]

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, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record reflects that the applicant was born in China on March 30, 1989. The applicant's parents were also born in China, and his father became a naturalized U.S. citizen on December 18, 2001, when the applicant was twelve years old. The applicant's parents were married in 1988, and there is no evidence that they ever obtained a divorce. The applicant was admitted into the United States as a lawful permanent resident on March 26, 2003, when he was thirteen 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 physical custody of his U.S. citizen parent, as required by § 320 of the Act. The application was denied on April 25, 2005. Counsel submitted a Form I-290B Notice of Appeal to the district office on June 15, 2005.

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 gave notice to the applicant that he had 33 days to file the appeal; however, Citizenship and Immigration Services received the appeal 51 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, 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.