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U.S. Citizenship
and Immigration
Services

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EL

FILE: [REDACTED] Office: HARLINGEN, TX

Date: OCT 10 2006

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 301(a)(7) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1401(a)(7).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Harlingen, Texas, 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 on March 30, 1976 in Mexico. The applicant's mother, [REDACTED] was born a U.S. citizen on March 8, 1938. The applicant seeks a certificate of citizenship as a child born abroad to a non-U.S. citizen and a U.S. citizen who, prior to the applicant's birth, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after the age of 14 years.

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 with the office that issued the denial within 30 days of service of the decision. If the decision is 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 26, 2006. It is noted that the district director properly gave notice to the applicant that she had 33 days to file an appeal. The appeal was initially filed without being signed by the applicant and was, therefore, returned to her. Accordingly, it was not received by Citizenship and Immigration Services until March 9, 2006, 42 days from the date the district director issued his decision. Accordingly, the appeal is 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.