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U.S. Citizenship
and Immigration
Services



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FILE:

Office: PHILADELPHIA, PA

Date:

SEP 13 2006

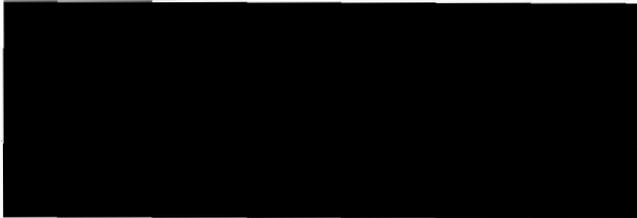
IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship pursuant to Section 201(g) of the Nationality Act of 1940, 8 U.S.C. § 601(g).

ON BEHALF OF PETITIONER:



PUBLIC COPY

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, Philadelphia, Pennsylvania, 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 May 31, 1952, in Lithuania. The applicant's father [REDACTED] was born on March 1, 1916 in Massachusetts. The applicant seeks a certificate of citizenship as a child born abroad to a U.S. citizen.

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 December 2, 2005 and the record contains evidence that it was mailed to the applicant on that date. It is noted that the district director properly gave notice to the applicant that she had 33 days to file an appeal. The instant appeal was not, however, received by Citizenship and Immigration Services until February 16, 2006, 76 days from the date the district director issued his decision. Accordingly, the appeal is untimely filed.

Counsel, on appeal, states that the applicant "did not go to the post office until January 13, 2006 to pick up the letter," although the AAO notes that the letter was mailed to the address provided by the applicant in Application for Certificate of Citizenship (Form N-600) and the record contains no notification of a change in the applicant's address. Counsel also notes that she was not notified of the denial of the instant application, although a Notice of Entry of Appearance as Attorney or Representative (Form G-28) had been submitted with the Form N-600. However, the denial letter in the record indicates that counsel was sent a copy.

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.

