



U.S. Citizenship
and Immigration
Services

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invasion of personal privacy

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FILE: [REDACTED] Office: BUFFALO, NY

Date: AUG 06 2007

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship pursuant to former Section 309(a) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1409(a)

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, Buffalo, New York 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 16, 1954 in Panama. The applicant's father, [REDACTED] was born on June 19, 1924 in Bristol, Tennessee. The applicant seeks a certificate of citizenship as a child born out of wedlock to a U.S. citizen father under section 309(a) of the Immigration and Nationality Act (the Act), as amended, 8 U.S.C. § 1409(a).

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 her decision on March 1, 2007 and notified the applicant of the deadline for filing an appeal. *District Director's Decision*, dated March 1, 2007. The applicant received the district director's decision via personal service on March 2, 2007. *Certificate of Service signed by the applicant*, dated March 2, 2007. Accordingly, the applicant was required to file the appeal no later than April 1, 2007. The appeal was not, however, received by Citizenship and Immigration Services (CIS) until April 24, 2007, 53 days after service of the decision. Therefore, the applicant has not met the filing requirements for an 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 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.