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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

E2

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 02 2007
WAC 06 058 53372

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to former Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center 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 August 11, 1990 in Cuba. The applicant's father, became a naturalized U.S. citizen on March 23, 2004. The applicant seeks a certificate of citizenship as the child of a U.S. citizen father under section 320 of the Immigration and Nationality Act (the Act), as amended, 8 U.S.C. § 1431.

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 director issued his decision on July 20, 2006, in which he notified the applicant that she had 30 days, 33 days if the decision was mailed, to file an appeal with the office issuing the decision. The applicant initially submitted an unsigned Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO), which was rejected. The signed Form I-209B did not reach Citizenship and Immigration Services until September 5, 2006, 47 days after the director denied the application. 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.