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**U.S. Citizenship
and Immigration
Services**



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FILE: [REDACTED]
WAC 06051 50435

Office: CALIFORNIA SERVICE CENTER

Date: FEB 27 2007

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 320 of the Immigration and Nationality Act, as amended, 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 January 6, 1986 in Yemen. The applicant's father became a U.S. citizen on September 12, 1983. 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.

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 June 29, 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, however, submitted the Form I-290B, Notice of Appeal with the Administrative Appeals Office, directly to the AAO.¹ Accordingly, the appeal did not reach the California Service Center until Thursday, August 22, 2006, 54 days after the director's denial of 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 director declined to treat the late appeal as a motion and forwarded the matter to the AAO. Accordingly, the appeal will be rejected as untimely filed.

ORDER: The appeal is rejected.

¹ Even if the AAO had been the appropriate office to receive the appeal, the Form I-290B would still have been untimely filed as it did not reach the AAO until August 7, 2006, 39 days after the director's denial of the application.