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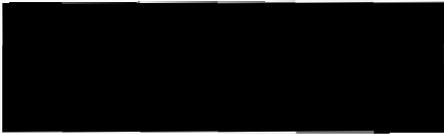
U.S. Department of Homeland Security  
20 Mass. Ave, N.W. Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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Services

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FILE: 

OFFICE: HARLINGEN, TEXAS Date: JAN 26

IN RE: APPLICANT: 

APPLICATION: Application for Certificate of Citizenship under section 301 of the former Immigration and Nationality Act, 8 U.S.C. § 1401

ON BEHALF OF APPLICANT:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office 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 District Director, Harlingen, Texas, denied the application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

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 within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a Citizenship and Immigration Services (CIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The district director issued the decision on April 22, 2003, and the record contains a Post Office Form-3811 that indicates that it was delivered to the applicant on April 30, 2003. It is noted that the director gave notice to the applicant that he had 30 days in which to properly file the appeal. *Decision from the District Director* at 2, dated April 22, 2003. The district director further informed the applicant that any such appeal must be filed with the Harlingen District Office. *Id.* **According to the date stamp on the Form I-290B Notice of Appeal**, it was received by CIS on July 1, 2003, 62 days after the decision was issued. Accordingly, the appeal was untimely filed. Pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(i), the AAO lacks discretion to accept a late appeal.

Counsel for the applicant submits a brief in which he quotes the regulation at 8 C.F.R. § 103.3(a)(2)(i) as requiring that “the affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.” *Brief from Counsel* at 2, dated May 13, 2003. However, counsel requests that the present “dilatatory appeal” now be accepted, as “[i]t was filed timely directly with the Administrative Appeals Unit.” *Id.* at 5. The record contains no evidence that the appeal was first filed with the AAO. As noted above and as observed by counsel, in order to be properly filed, the present appeal must have been filed with the Harlingen District Office by June 2, 2003, 33 days after the decision was served on the applicant. The record shows that it was filed on July 1, 2003, thus it was not timely.

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.