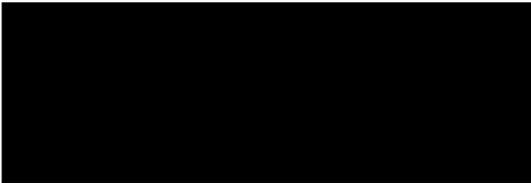




U.S. Citizenship  
and Immigration  
Services

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identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



*ER*

FILE:



Office: PHILADELPHIA, PA

Date: JUN 08 2007

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 321 of the former Immigration and Nationality Act; 8 U.S.C. § 1432.

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*

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.

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).

The applicant indicates that he received the May 13, 2005 decision on July 12, 2005. This is confirmed by a certificate of service. On August 11, 2005, the applicant, through counsel, erroneously filed a Form EOIR 19, Notice of Appeal, to the Board of Immigration Appeals (sending the Notice of Appeal to the District Counsel's Office). An appeal is not properly filed until it is received by the appropriate office. The applicant did not send the correct Form I-290B, Notice of Appeal to the AAO, to the USCIS Philadelphia District Office until October 17, 2005, 158 days after the issuance of the decision (and 98 days after its claimed receipt). Accordingly, the appeal was untimely filed.

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.