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U.S. Citizenship
and Immigration
Services

E2

FILE:

Office: NEW YORK, NEW YORK

Date: MAY 16 2007

IN RE:

Applicant

APPLICATION:

Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. §1431.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 application was denied by the District Director, New York, New York on September 11, 2003. The applicant appealed the denial to the Administrative Appeals Office (AAO). The appeal was sustained on July 6, 2005. On April 5, 2007, the USCIS New York District Office issued and forwarded a Form I-290C, Notice of Certification, to the AAO. The director's certification will be withdrawn and the AAO decision of July 6, 2005 will be affirmed.

The regulations at 8 C.F.R. § 103.4(a)(4) and (5) provide for Certification to the AAO of cases "within the appellate jurisdiction of the Associate Commissioner, Examinations [the AAO] . . . only after an initial decision is made." Pursuant to the regulations, certification is permissible only after an initial decision is issued by the district director. The regulations do not contemplate the issuance of a Notice of Certification by the district director after an appellate decision has been issued by the AAO. An appellate decision by the AAO is the final agency action in a case and is binding upon the district director. The AAO is therefore without jurisdiction to consider the instant Notice of Certification.

ORDER: The director's certification is withdrawn and the AAO decision of July 6, 2005 is affirmed.