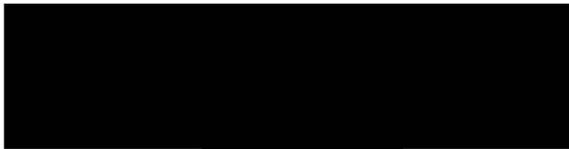




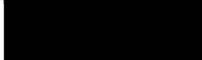
U.S. Citizenship  
and Immigration  
Services

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**PUBLIC COPY**  
**identifying data deleted to**  
**prevent clearly unwarranted**  
**invasion of personal privacy**



FILE:



Office: LOS ANGELES, CA

Date: APR 25 2008

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship pursuant to former  
Section 301 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Los Angeles, California and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed. The matter will be returned to the district director for consideration as a motion to reopen and issuance of a new decision.

The record reflects that the applicant was born on April 24, 1955 in Mexico. The applicant's mother, [REDACTED], was born on December 11, 1930 in Lincoln, California. The applicant's parents married on April 20, 1951, The applicant seeks a certificate of citizenship based on his birth to his U.S. citizen mother.

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 district director issued her decision on November 9, 2006, in which she notified the applicant that he had 33 days to file an appeal. However, appeal in the present case was not received by Citizenship and Immigration Services until December 28, 2006, 49 days after the district director denied the petition. 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 appeal includes the applicant's brief, with new and previously submitted documentation.

Here, the untimely appeal meets the requirements of a motion to reopen. 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). Therefore, the matter is returned to the district director for consideration as a motion to reopen and the issuance of a new decision.

**ORDER:** The appeal is rejected. The matter is returned to the district director for consideration as a motion to reopen and the issuance of a new decision.