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U.S. Department of Homeland Security
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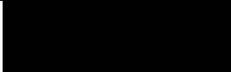
U.S. Citizenship
and Immigration
Services

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FILE:



Office: ST. PAUL, MN

Date:

AUG 05 2008

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.

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 Field Office Director, St. Paul, Minnesota. 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 director for consideration as a motion to reopen.

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 decision in the applicant's case is dated January 8, 2008. It is noted that the field office director gave notice to the applicant that an appeal of the decision had to be filed within 33 days, on the appropriate form, and accompanied by the required fee. The director specifically noted that the appeal should not be sent directly to the AAO. The applicant dated the appeal on January 25, 2008, but erroneously mailed it to this office. The local USCIS office received the appeal on February 26, 2008, more than 33 days after the decision in his case was issued. The appeal is not considered filed until it is received by the appropriate USCIS office. Accordingly, the appeal was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. As the appeal was untimely filed, the appeal must be rejected. Nevertheless, 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.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the untimely appeal meets the requirements of a motion to reopen. The AAO notes that the application was denied because the record did not establish that the applicant was in his U.S. citizen parent's legal and physical custody. The AAO notes the 1998 Order of a family court in the State of New York awarding the applicant's father joint custody of the applicant. The appeal is also accompanied by a letter from the applicant's father explaining that he shares physical custody of the applicant. The AAO further notes that it is well-established that a valid U.S. passport constitutes conclusive proof of a person's U.S. citizenship and may not be collaterally attacked. *Matter of Villanueva*, 19 I&N Dec. 101 (BIA 1984). The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the field office director. *See* 8 C.F.R. § 103.5(a)(1)(ii). Therefore, the appeal will be returned to the director for consideration as a motion to reopen.

ORDER: The appeal is rejected. The matter is returned to the director for consideration as a motion to reopen.