



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

52

FILE: [REDACTED] Office: SEATTLE (YAKIMA), WA Date: JAN 04 2008

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 309 of the Immigration and Nationality Act; 8 U.S.C. § 1409

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, Seattle (Yakima), Washington. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed. The AAO will return the matter 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 after 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 date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued the decision on August 13, 2007. It is noted that the district director properly gave notice to the applicant that he had 33 days to file the appeal. The appeal in this case was received by USCIS on September 21, 2007, more than 33 days after the issuance of the director's decision.

The AAO notes that the director's decision instructed the applicant to submit a filing fee of \$385 with the appeal, and that the fee had in fact changed to \$585. Nevertheless, neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. The AAO is therefore without jurisdiction to consider the appeal, and the appeal must be rejected.

The AAO further notes that 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).

The applicant indicates on the Form I-290B, Notice of Appeal, that new evidence accompanies the appeal. The AAO dismissed the applicant's appeal based in part on the finding that the applicant had not been legitimated prior to the age of 21.¹ In that regard, the AAO considered a legitimating document dated 1995. The AAO notes that the applicant's current Form N-600 was accompanied by a nearly identical legitimating

¹ The AAO notes that the applicant's original Form N-600, Application for Certificate of Citizenship, was denied and that an appeal of the denial was dismissed by this office on April 21, 2006. Pursuant to the regulations, at 8 C.F.R. § 341.6, "[a]fter an application for a Certificate of Citizenship has been denied and the appeal time has run, a second application submitted by the same individual shall be rejected and the applicant instructed to submit a motion for reopening or reconsideration"

document dated 1966, purporting to establish that the applicant's father recognized him prior to the age of 21. The director did not address this document in his decision.

This untimely appeal therefore 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 director. *See* 8 C.F.R. § 103.5(a)(1)(ii). Therefore, the director must consider the untimely appeal as a motion to reopen and render a new decision accordingly.

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