



U.S. Citizenship
and Immigration
Services

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FILE:

Office: WASHINGTON, DC

Date:

JUL 03 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, Washington, D.C., 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 decision in the applicant's case is dated July 20, 2007. It is noted that the 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 applicant dated his appeal August 1, 2007, but it was postmarked on September 4, 2007 and received with the appropriate fee by USCIS on September 6, 2007, more than 33 days after the decision in his case was issued. 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 does not meet the requirements of a motion to reopen or reconsider. The director properly noted that section 320 of the Act, 8 U.S.C. § 1431, requires that the applicant be admitted as a lawful permanent resident of the United States prior to attaining the age of 18. The applicant is not a lawful permanent resident.¹ Section 322 of the Act, 8 U.S.C. § 1433, is inapplicable because the applicant is not residing abroad in the custody of a U.S. citizen parent. The applicant has not submitted any evidence or argument warranting reopening or reconsideration of the director's decision. Therefore, the appeal need not be treated as a motion and will be rejected.

ORDER: The appeal is rejected.

¹ The AAO notes that the applicant was adopted by a U.S. citizen in 2006, at the age of 13. The applicant may automatically acquire U.S. citizenship should he obtain lawful permanent resident status prior to his 18th birthday (in 2011), and remain in the legal and physical custody of his U.S. citizen adoptive parent.