

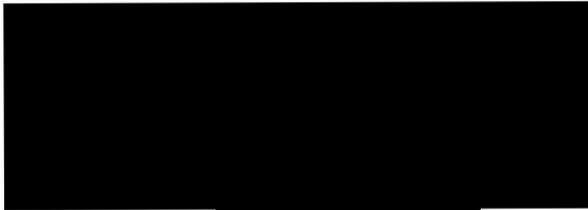
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**U.S. Citizenship
and Immigration
Services**

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FILE:



Office: EL PASO, TX

Date:

JUL 17 2008

IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship under Sections 301 and 309 of the Immigration and Nationality Act, 8 U.S.C. §§ 1401 and 1409

ON BEHALF OF APPLICANT:



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, El Paso, Texas, and 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 reconsider.

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 24, 2007. It is noted that the district 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 instructed the applicant to send the appeal to the El Paso USCIS office. The applicant dated the appeal on August 13, 2007, but erroneously mailed it to this office. USCIS El Paso properly received the appeal on October 9, 2007, 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 reconsider. The application was denied because the field office director found that an Affidavit of Support, Form I-687, did not meet the requirement in section 309 of the Act that the applicant's father agree in writing to support the applicant until the age of 18. On appeal counsel submits a brief outlining case law he asserts overcomes the field office director's decision. Therefore, the director must consider the untimely appeal as a motion to reconsider and render a new decision accordingly.

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