



U.S. Citizenship
and Immigration
Services

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FILE:



Office: PHILADELPHIA, PA

Date:

JUL 17 2008

IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship under Section 321 of the former Immigration and Nationality Act, 8 U.S.C. § 1432 (repealed).

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 District Director, Philadelphia, Pennsylvania, 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 5, 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 not to send the appeal directly to the AAO. The applicant dated the appeal on July 26, 2007, but erroneously mailed it to the AAO. USCIS properly received the appeal on August 17, 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 does not meet the requirements of a motion to reopen or reconsider. The AAO notes that the applicant claims on appeal that the Child Citizenship Act of 2000 (CCA) applies to his case. The CCA, however, is not retroactive and only applies to individuals who were under 18 on its effective date, February 27, 2001. The applicant was 20 years old on February 27, 2001. **The applicant cannot establish** that he acquired U.S. citizenship under the CCA. Likewise, the applicant cannot establish eligibility for citizenship under section 321 of the former Immigration and Nationality Act because his parents were not legally separated prior to his 18th birthday. Therefore, the appeal need not be treated as a motion and will be rejected.

ORDER: The appeal is rejected