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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: OKLAHOMA CITY, OK

Date: JUL 17 2008

IN RE:

Applicant:

[REDACTED]

APPLICATION:

Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401.

ON BEHALF OF APPLICANT:

[REDACTED]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Oklahoma City, Oklahoma, 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 November 16, 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 December 17, 2007, but it received by USCIS on December 20, 2007, 34 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 AAO notes that the instant Application for Certificate of Citizenship is the applicant's second and, as such, it is subject to rejection pursuant to 8 C.F.R. § 341.6. Further, the AAO notes that the applicant does not include any additional evidence or argument with the appeal. The applicant's claim was rejected because his father, who in 1958 obtained a certificate of citizenship evidencing that he acquired U.S. citizenship at birth, was not physically present in the United States for 10 years prior to the applicant's birth (in 1967). The applicant continues to maintain that his father entered the United States in 1955, and explains that his father lied during his citizenship interview when he stated that he had entered in 1958. The record contains evidence of the applicant's father's presence in the United States beginning in 1958. With respect to the period from 1955 to 1958, the record contains affidavits from the applicant's relatives. These affidavits were considered by the director, and given the appropriate weight in light of the important discrepancies in the record. The applicant has not submitted any additional evidence or argument on appeal 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.