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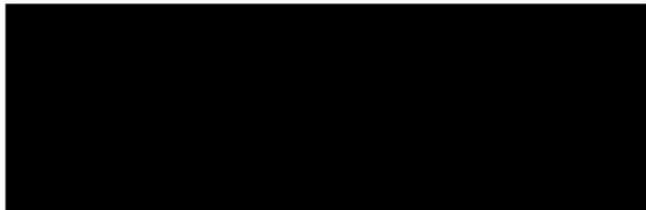
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: ATLANTA, GA (CHARLOTTE) Date: SEP 09 2008

IN RE: Applicant: [REDACTED]

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for Certificate of Citizenship under Section 321 of the former Immigration and Nationality Act, 8 U.S.C. § 1432 (repealed)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-REPRESENTED¹

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

¹ Although the Form I-290B, Notice of Appeal to the Administrative Appeals Office, was filed on the applicant's behalf by Kenneth B. Hatcher, there is no Form G-28, Notice of Entry of Appearance as Attorney or Representative in the applicant's file.

DISCUSSION: The application was denied by the District Director, Atlanta, Georgia (Charlotte), 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 September 30, 2005. 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 instructed the applicant to send the appeal to the USCIS Charlotte sub-office. The appeal was first received on October 21, 2005, but the appropriate fee was not submitted until November 8, 2005, 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, and accompanied by the required filing fee. 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 applicant's appeal is not accompanied by any new evidence or arguments that would warrant reopening or reconsideration of her case. The applicant claims that he derived U.S. citizenship upon his father's naturalization, pursuant to section 321 of the former Immigration and Nationality Act, 8 U.S.C. § 1431(repealed). Although the record indicates that he was under 18 years of age at the time, and a lawful permanent resident, the statute further required that he establish that both his natural parents were U.S. citizens, or that he was in the legal custody of his father upon a legal separation. The applicant's parents were never married, and therefore never legally separated. The applicant is statutorily ineligible for citizenship. The appeal need not be treated as a motion and will be rejected.

ORDER: The appeal is rejected.