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U.S. Citizenship
and Immigration
Services

EB3

APR 23 2007

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FILE:

Office: VERMONT SERVICE CENTER

Date:

IN RE:

APPLICATION:

Application for Replacement Naturalization/Citizenship Document under Section 338
of the Immigration and Nationality Act, 8 U.S.C. § 1149.

ON BEHALF OF PETITIONER:

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 Director, Vermont Service Center. The matter 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 record indicates that the District Director issued the decision on October 25, 2006. It is noted that the Director properly gave notice to the petitioner that she had 33 days to file the appeal. While the appeal was originally received by the Vermont Service Center on November 20, 2006, it was returned to the applicant. *See Notice of Action*, dated November 28, 2006. The appeal was properly filed with the Vermont Service Center on December 11, 2006 or 47 days after the decision was issued. Accordingly, the appeal was untimely filed.

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. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The Director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.