



U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: DALLAS, TX

Date: MAR 15 2007

IN RE:

Applicant:



APPLICATION:

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

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, Dallas, Texas. 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 applicant filed a Form N-565, Application for Replacement Naturalization/Citizenship Document on May 4, 2000. The District Director denied this application. *Decision of the District Director*, dated July 5, 2001. On August 13, 2001 the applicant submitted a Form I-290B, Notice of Appeal directly to the Administrative Appeals Office (AAO) in Washington, DC. On August 14, 2001 the AAO returned the appeal, stating that the appeal should have been filed with the INS office that had made the original decision in the case. The applicant submitted a second Form N-565 on November 14, 2002 and a third Form N-565 on April 13, 2005. On December 14, 2005 the District Director denied the Form N-565 filed on November 14, 2002 for having duplicate applications submitted. *Decision of the District Director*, dated December 14, 2005. The District Director stated that the Form N-565 filed on April 13, 2005 remained pending. *Id.* On April 12, 2006 the District Director denied the Form N-565 filed on April 13, 2005. *Decision of the District Director*, dated April 12, 2006. It is noted that the District Director properly gave notice to the petitioner that he had 30 days to file the appeal. The applicant's Form I-290B, dated July 27, 2006, was received on August 10, 2006 or 120 days after the decision was issued. The AAO notes that the applicant stated on his Form I-290B that he was appealing the decision dated July 27, 2006, however, the record indicates that the District Director issued a decision on the Form N-565 on April 12, 2006. 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.