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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

E3



AUG 13 2010

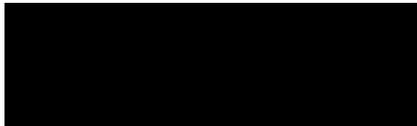
FILE: [REDACTED] Office: TEXAS SERVICE CENTER
SRC 09 093 51809

Date:

IN RE: [REDACTED]

APPLICATION: Application for Replacement Naturalization Document under Section 338 of the
Immigration and Nationality Act, 8 U.S.C. § 1449

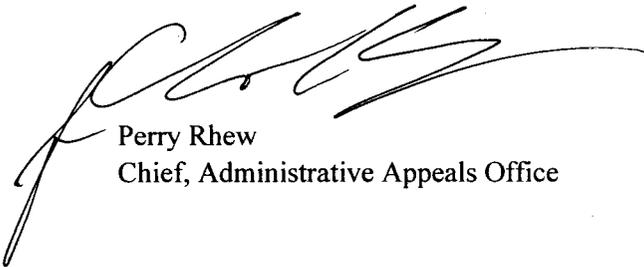
ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

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DISCUSSION: The Application for Replacement Naturalization Document (Form N-565) was denied by the Director, Texas Service Center. The director denied a subsequent motion to reopen, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed, and the AAO will return the matter to the director for consideration as a motion to reconsider.

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 after 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 date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued the decision denying the applicant's motion to reopen on February 3, 2010. *See Decision of the Director*, dated Feb. 3, 2010. The applicant's appeal was not properly filed until March 16, 2010. *See Form I-290B, Notice of Appeal*. Accordingly, the appeal was untimely filed. Because neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal, the appeal must be rejected.

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. *See* 8 C.F.R. § 103.3(a)(2)(v)(B)(2). Here, the untimely appeal meets the requirements of a motion to reconsider. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Director of the Texas Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii). Therefore, the director must consider the untimely appeal as a motion to reconsider, and render a new decision accordingly.

ORDER: The appeal is rejected. The matter is returned to the service center director for consideration as a motion to reconsider.



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**U.S. Citizenship
and Immigration
Services**

E3

JERRICA MARLA CHOU
501 MAPLE AVE.
VALLEJO, CA 94591

FILE: A25 289 670 Office: NEBRASKA SERVICE CENTER
LIN 10 069 50218

Date: **AUG 13 2010**

IN RE: JERRICA MARLA CHOU

APPLICATION: Application for Replacement Naturalization Document under Section 338 of the
Immigration and Nationality Act, 8 U.S.C. § 1449

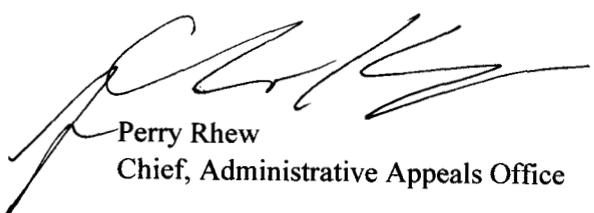
ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

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any other purpose.

DISCUSSION: The application was denied by the Director, Nebraska Service Center, 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 after 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 date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued the decision on February 12, 2010. *See Decision of the Director*, dated Feb. 12, 2010. The applicant's appeal was not properly filed until April 16, 2010. *See Form I-290B, Notice of Appeal*. Accordingly, the appeal was untimely filed. Because neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal, the appeal must be rejected.

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. *See* 8 C.F.R. § 103.3(a)(2)(v)(B)(2). 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. 8 C.F.R. § 103.5(a)(3). 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. *Id.* A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The applicant presents no new facts to be proved or reasons for reconsideration supported by any pertinent precedent decisions. The untimely appeal does not meet the requirements of a motion to reopen or to reconsider, and will be rejected.

ORDER: The appeal is rejected.

