

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

**PUBLIC COPY**

E3



FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER  
LIN 10 088 50301

Date: SEP 22 2010

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:

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

**DISCUSSION:** The Application for Replacement Naturalization Document (Form N-565) was denied by the Director, Nebraska Service Center. 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 Form N-565 on March 23, 2010. *See Decision of the Director*, dated March 23, 2010. It is noted that the director properly gave notice to the petitioner that she had 33 days to file the appeal, and the director specifically instructed the petitioner where to properly file the appeal. The petitioner subsequently forwarded the Form I-290B, Notice of Appeal or Motion, to the AAO in error. An appeal/motion is not properly filed until the proper office, in this case the Nebraska Service Center, receives it. The petitioner resubmitted the appeal to the Nebraska Service Center in accordance with the instructions. The appeal was received by the Nebraska Service Center on April 29, 2010, 37 days after the decision was issued. Accordingly, the appeal was untimely filed. *See Form I-290B, Notice of Appeal*. 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 Nebraska 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.