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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED] OFFICE: TEXAS SERVICE CENTER DATE: NOV 30 2007

IN RE: [REDACTED] APPLICANT: [REDACTED]

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:

[REDACTED]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed. The matter will be returned to the director for treatment as a motion to reopen and for issuance of a new decision.

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. 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. 8 C.F.R. § 103.2(a)(7)(i).

The district director issued the applicant's denial decision on July 13, 2007. The district director properly gave notice to the applicant that she had 33 days to file the appeal. The record reflects that the applicant attempted to file an appeal with the Texas Service Center on August 13, 2007. However, the appeal was rejected as improperly filed pursuant to 8 C.F.R. § 103.2(a)(7), based on the applicant's failure to submit the required filing fee. An appeal rejected under 8 C.F.R. § 103.2(a)(7) does not retain its filing date. The record reflects that the applicant's properly filed appeal was received at the Texas Service Center on August 30, 2007 – 48 days after the denial decision was issued. The appeal was therefore untimely filed.

Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. 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).

In the present matter, the applicant's untimely appeal contains new birth certificate evidence and a legal brief asserting that the applicant is entitled to receive a corrected certificate of naturalization. The untimely appeal meets the requirements for consideration as a motion to reopen. Under 8 C.F.R. § 103.5(a)(1)(ii), the official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the director, Texas Service Center. Therefore, the director must consider the untimely appeal as a motion to reopen and render a new decision accordingly.

ORDER: The appeal is rejected. The matter is returned to the director for treatment as a motion to reopen and for issuance of a new decision.