

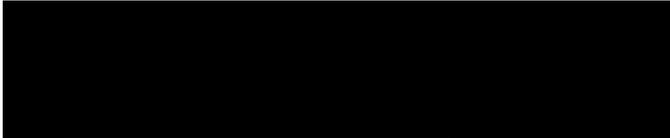
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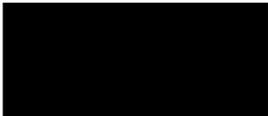
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:



OFFICE: SAN ANTONIO, TX

DATE:

NOV 30 2007

IN RE:



APPLICATION: Application for Certificate of Citizenship.

ON BEHALF OF APPLICANT:



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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Antonio, Texas. 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 district 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 after 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 decision on April 14, 2004. The district director properly gave notice to the applicant that she had 30 (33) days to file the appeal. The record reflects that the appeal was sent to the AAO in error, and that it was received by the AAO on May 25, 2004 – 41 days after the decision was issued. An appeal is not properly filed until the office with proper jurisdiction receives it. The appeal was received by U.S. Citizenship and Immigration Services on June 4, 2004 – 51 days after the denial decision was issued. The applicant indicates, through counsel, that her appeal was timely filed because the denial decision erroneously instructed her to file with the AAO, rather than with the San Antonio, Texas office. The AAO notes, however, that the applicant's appeal was received by the AAO more than 33 days after issuance of the denial decision. The AAO notes further, upon review of the applicant's denial decision, that the letter prominently states the appeal should not be sent to the AAO, and that the appeal must be submitted to the office that issued the decision. Accordingly, the AAO finds that the appeal was untimely filed.

Neither the 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 application was denied because the applicant had failed to establish that she was legitimated by her father in accordance with immigration laws and regulations. The applicant's untimely appeal contains new birth certificate evidence and a legal brief asserting that the evidence demonstrates the applicant was legitimated by her father. The untimely appeal thus meets requirements for treatment as a motion to reopen. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the district director, San Antonio, Texas. 8 C.F.R. § 103.5(a)(1)(ii). Therefore, the district 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.



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