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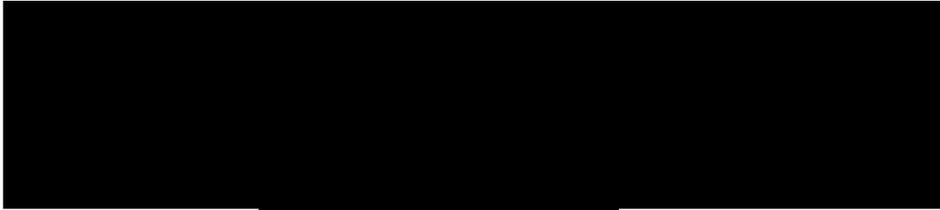
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

Office: YAKIMA, WA

Date: NOV 30 2007

IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship.

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Yakima, Washington. 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 field office director for consideration as a motion to reopen.

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 field office director issued the applicant's decision on June 29, 2007. It is noted that the field office director properly gave notice to the applicant that he had 33 days to file the appeal. The record reflects that the appeal was sent to the AAO in error on August 10, 2007 – 42 days after the denial decision was issued. An appeal is not properly filed until the office with proper jurisdiction receives it. The appeal was received by the U.S. Citizenship and Immigration Services (CIS) field office in Yakima, Washington on August 20, 2007 – 52 days after the denial decision was issued. Accordingly, 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 Form N-600, Application for Certificate of Citizenship (N-600 Application) was denied because the applicant failed to establish his mother was born in the United States or that she had resided in the U.S. prior to the applicant's birth. The applicant's untimely appeal contains a copy of the applicant's brother's U.S. birth certificate, and a letter written by the applicant asserting that the new evidence demonstrates his mother resided in the United States prior to the applicant's birth. The untimely appeal thus meets the requirements for consideration 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 field office director, Yakima, Washington. 8 C.F.R. § 103.5(a)(1)(ii). The field office director must therefore 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 field office director for consideration as a motion to reopen.