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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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[Redacted]

FILE:

[Redacted]

Office: SAN ANTONIO, TX

Date:

MAR 24 2008

IN RE:

Respondent:

[Redacted]

APPLICATION:

Cancellation of Certificate of Citizenship under Section 342 of the Immigration and Nationality Act; 8 U.S.C. § 1453.

ON BEHALF OF RESPONDENT:

[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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The respondent's Certificate of Citizenship was canceled by the District Director, San Antonio, Texas, 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. The appeal must be submitted to the correct office, and must be accompanied by the required filing fee. 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 district director issued the decision on October 16, 2006. It is noted that the director properly gave notice to the applicant that he had 33 days to file the appeal with the local office. The appeal is dated November 16, 2006, 32 days after the issuance of the decision. The appeal was received and the fee was collected on November 20, 2006, 36 days from the date of issuance of the decision. Therefore, the appeal is untimely.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. As the appeal was untimely filed, the appeal must be rejected. Nevertheless, 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).

The AAO notes that the applicant fails to articulate any argument in his Form I-290B, Notice of Appeal or to provide any additional evidence to overcome the director's decision.<sup>1</sup> The untimely appeal therefore does not meet the requirements of a motion to reopen or reconsider, and there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

**ORDER:** The appeal is rejected.

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<sup>1</sup> Applicant's counsel requests that a copy of the file be made available to him in order to prepare a brief. The applicant is advised that a Freedom of Information Act (FOIA) request may be made by submitting Form G-639 to the National Records Center, FOIA/PA Office. *See* [www.uscis.gov](http://www.uscis.gov). The AAO's jurisdiction is limited to the matters listed in the regulations, and does not include jurisdiction over matters arising under the FOIA.