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



U.S. Citizenship  
and Immigration  
Services

## PUBLIC COPY

EF

FILE:

Office: LOS ANGELES, CALIFORNIA

Date: MAR 20 2006

IN RE:

Applicant:

APPLICATION: Application for Certificate of Citizenship under § 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433

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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record reflects that the applicant was born in the Philippines on September 22, 1990. The applicant's parents were also born in the Philippines, but her father derived U.S. citizenship from his father. The applicant's parents were never married to each other. The applicant seeks a certificate of citizenship under § 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433.

The district director concluded that the applicant failed to establish that she resided in the legal custody of her U.S. citizen father, because she did not show that her father had legitimated her. The application was denied on March 25, 2004. Counsel submitted a Form I-290B Notice of Appeal to the district office on July 15, 2004.

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 record indicates that the district director gave notice to the applicant that he had 33 days to file the appeal; however, Citizenship and Immigration Services received the appeal 112 days after the decision was issued. Accordingly, the appeal was untimely filed.

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. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the district director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The district director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

**ORDER:** The appeal is rejected.