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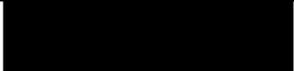
U.S. Citizenship
and Immigration
Services

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FILE:



Office: LOS ANGELES, CA

Date:

FEB 13 2008

IN RE:

Applicant:



APPLICATION:

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

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Los Angeles, California, 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 of 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 decision in the applicant's case is dated September 7, 2007. It is noted that the director gave notice to the applicant that an appeal of the decision had to be filed within 33 days and accompanied by a \$385 fee. The applicant's appeal was rejected on October 24, 2007 for failure to enclose the appropriate fee, which had increased to \$585. The appeal, with the appropriate fee, was received on November 2, 2007, more than 33 days after the decision in his case 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).

Here, the application was denied because the applicant is over the age of 18 and no longer eligible for citizenship under section 322 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1433. The applicant does not submit any new evidence, facts or argument on appeal to support his claim of citizenship. The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and CIS lacks statutory authority to issue a certificate of citizenship when an applicant fails to meet the relevant statutory requirements set forth in the Act. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988).

The untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2). As the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

ORDER: The appeal is rejected.