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U.S. Citizenship
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Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date:

JUN 06 2005

IN RE:

Applicant:



APPLICATION:

Application for Travel Document Pursuant to Section 223 of the Immigration and Nationality Act, 8 U.S.C. § 1203.

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. Wienmann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Acting Director, Nebraska Service Center, 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. 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 Acting Director issued the decision on October 12, 2004. It is noted that the Acting Director properly gave notice to the applicant that he had 33 days to file the appeal. The Notice of Appeal to the AAO (Form I-290B) was forwarded to the Nebraska Service Center on November 3, 2004. The Form I-290B was rejected by the Nebraska Service Center because it was not signed. The Form I-290B was returned to the applicant and it was resubmitted and received by the Nebraska Service Center on November 22, 2004, 41 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 proceedings, in this case the Acting Director, Nebraska Service Center. See 8 C.F.R. § 103.5(a)(1)(ii). The Acting 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.