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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEW YORK, NEW YORK Date: MAY 19 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under section 321of the former Immigration and Nationality Act, 8 U.S.C. § 1432.

ON BEHALF OF APPLICANT:

[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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director / District Director, New York, New York. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be dismissed.

The applicant was born on January 2, 1968, in the Dominican Republic. The applicant's father was born in the Dominican Republic in May 1938, and he became a U.S. citizen on July 22, 1981. The applicant's mother was born in the Dominican Republic in October 1941. She became a naturalized U.S. citizen on December 10, 1993. The applicant's parents were married on March 24, 1962. They divorced on December 22, 1976. The applicant's parents remarried each other on March 11, 1979, and divorced a second time on December 22, 1979. The applicant was lawfully admitted into the United States (U.S.) for permanent residence on January 23, 1968. He seeks a certificate of U.S. citizenship under section 321 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1432.

In a decision dated February 14, 2003, the district director determined that the applicant failed to establish he met requirements for a certificate of citizenship under section 321 of the former Act. The application was denied accordingly. In a decision dated June 24, 2003, the AAO found that the applicant had failed to meet the requirements set forth in section 321 of the Act. The applicant's appeal was dismissed accordingly. The AAO notes that the applicant was represented by counsel on appeal (Cheryl Renee David, Esq.), and that the June 24, 2003, AAO decision was sent to the applicant and to his attorney of record.

The record reflects that the applicant retained a new attorney (Angel Del. Villar, Esq.), and that a new Attorney of Record, Form G-28, was signed by the applicant on December 10, 2003. On December 18, 2003, the applicant's new attorney filed a Motion to Reconsider the AAO's June 24, 2003, decision.[1]

The June 24, 2003, AAO decision clearly stated in its instructions that:

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[1] The AAO notes that counsel labeled his motion a Motion to Reopen and Reconsider.

8 C.F.R. section 103.5(a) states in pertinent part:

> . . . .
>
> (2) Requirements for motion to reopen. 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.
>
> (3) Requirements for motion to reconsider. 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.

The AAO notes that counsel's motion did not state new facts to be proven in the applicant's case, and that instead the motion consisted of assertions pertaining to the AAO's interpretation of legal principles. The AAO therefore finds that the present motion is a motion to reconsider, and that it is not a motion to reopen.

> If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider . . . . Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. §103.5(a)(1)(i).

8 C.F.R. §103.5(a) states in pertinent part:

> (1) When filed by affected party-- (i) General . . . . Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider.
>
> . . . .
>
> (4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

The record reflects that the AAO decision dismissing the applicant's appeal was dated June 24, 2003, and that the applicant's motion to reconsider was filed on December 18, 2003, well after the 30 days allowed under 8 C.F.R. § 103.5. Because the motion is untimely, it will be dismissed.

ORDER: The motion is dismissed.