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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE:

[Redacted]

Office: HARLINGEN, TX

Date: OCT 10 2006

IN RE:

Applicant:

[Redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to Section 301(a)(7) of the Immigration and Nationality Act, as amended; 8 U.S.C. § 1401(a)(7)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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 District Director, Harlingen, Texas and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The record reflects that the applicant was born on June 14, 1968 in Mexico. The applicant's father, [REDACTED] was born on October 24, 1928 in Brownsville, Texas. The applicant seeks a certificate of citizenship as a child born abroad to a U.S. citizen father.

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 with the office that issued the denial within 30 days of service of the decision. If the decision is mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the district director issued his decision on January 9, 2006. In his decision, the district director informed the petitioner that he had 30 days to file an appeal and that the appeal was to be submitted to the Harlingen district office. However, the petitioner sent his appeal directly to the AAO. As a result, it was not received at the district office until February 28, 2006, 50 days after the district director denied the petition. Therefore, the petitioner has not met the filing requirements for 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. 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.