



U.S. Citizenship
and Immigration
Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date:

SEP 18 2007

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 301(a)(7) of the former
Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7)

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. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, California Service Center. An appeal was filed but rejected as untimely by the Administrative Appeals Office (AAO). A motion to reconsider is now before the AAO. The motion will be dismissed and the underlying application will be denied.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) provides 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 appeal in this case did not meet the requirements of a motion to reopen or a motion to reconsider, and was rejected as untimely on March 29, 2007.

The instant motion was received on May 7, 2007. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the service center director. *See* 8 C.F.R. § 103.5(a)(1)(ii).

The AAO notes that 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 applicant's motion does not meet the requirements of a motion to reopen or reconsider. The applicant in this case was born in 1962, and was required to establish that her father was physically present in the United States for 10 years prior to her birth. *See* Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7). The AAO notes the social security earnings printout cited in the applicant's motion relates to the years 1969 to 1977.¹ The motion therefore does not state any new facts or arguments, nor is it supported by affidavits or other relevant documentary evidence. The motion does not meet the requirements of a motion to reopen or reconsider, and need not be returned to the service center director for consideration. The motion will be dismissed.

ORDER: The Motion is dismissed.

¹ The AAO further notes that, other than the applicant's father's birth and baptismal certificates, dated 1919 and 1920, there is no evidence in the record of her father's physical presence prior to 1962. The applicant has therefore not established eligibility for citizenship under any provision of the Act, including section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7).