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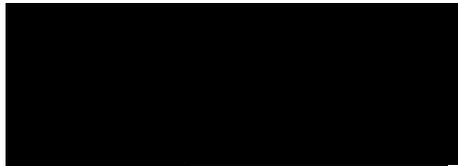
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Immigration Appeals MS 2090  
Washington, DC 20529

U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: SAN ANTONIO

Date:

APR 23 2009

IN RE:



APPLICATION: Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401

ON BEHALF OF APPLICANT:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, San Antonio, Texas. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed. The AAO will return the matter to the director for consideration as a motion to reopen.

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 date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the field office director issued the decision on April 3, 2008. It is noted that the director properly gave notice to the applicant that he had 33 days to file the appeal. The director specifically instructed the applicant not to send the appeal directly to the AAO. The Notice of Appeal (Form I-290B) in this case was dated April 30, 2008. It was mistakenly submitted to the AAO, and not to the San Antonio USCIS office as required. The appeal was not received by the appropriate office until May 18, 2008, more than 33 days after the issuance of the director's decision.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. The AAO is therefore without jurisdiction to consider the appeal, and the appeal must be rejected.

The AAO notes that 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). The appeal in this case is accompanied by a brief and additional evidence relating to the applicant's father's physical presence in the United States. Specifically, the applicant has submitted a sworn statement in support of his claim that his father was present in the United States since 1974. A second sworn statement, also submitted on appeal, indicates that the applicant's father was present in the United States in 1976. The applicant also submitted pay stubs dated in early 1975. The untimely appeal therefore meets the requirements of a motion to reopen.

The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the field office director. *See* 8 C.F.R. § 103.5(a)(1)(ii). Therefore, the field office director must consider the untimely appeal as a motion to reopen, review the additional evidence submitted, and render a new decision accordingly.

**ORDER:** The appeal is rejected. The matter is returned to the field office director for consideration as a motion to reopen.