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

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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: HOUSTON, TX

Date:

JUN 02 2009

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1421.

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.

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).

A handwritten signature in black ink that reads "John F. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Houston, Texas, 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 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 district director issued the decision on October 15, 2008. It is noted that the field office director properly gave notice to the applicant that it had 33 days to file the appeal, and that the appeal should not be sent directly to the AAO. *See* Decision of the Field Office Director. The Form I-290B, Notice of Appeal, is dated November 14, 2008, but was erroneously mailed directly to the AAO, and not received by the field office director until December 2, 2008,<sup>1</sup> more than 33 days after the decision was issued. Accordingly, the appeal was untimely filed. The AAO further notes that the applicant notes that a brief would be submitted to this office within 30 days, but that no such brief has been received to date.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing 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.

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).

The appeal in this case does not contain any new evidence or any argument to overcome the applicant's statutory ineligibility for citizenship. The AAO notes that the applicant has not been lawfully admitted for permanent residence as required by section 320 of the Act, 8 U.S.C. § 1431.<sup>2</sup> Additionally, the AAO notes that the applicant is not residing outside the United States in the physical and legal custody of a U.S. citizen parent as required by section 322 of the Act, 8 U.S.C. § 1433. The applicant cannot establish that she is eligible for citizenship under these or any other

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<sup>1</sup> The AAO notes that the appeal was rejected by the field office director on November 25, 2008 because it lacked an original signature. It was not properly filed until December 2, 2008.

<sup>2</sup> Her lawful non-immigrant admission does not, as the applicant's mother suggests, satisfy the requirement of section 320(a)(3).

provision of the Act at this time.<sup>3</sup> Her untimely appeal does not meet the requirements of a motion to reopen or reconsider, and therefore need not be treated as such. The appeal will be rejected as untimely filed.

**ORDER:** The appeal is rejected.

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<sup>3</sup> The AAO notes that the applicant may automatically acquire U.S. citizenship if, before her 18<sup>th</sup> birthday, she is admitted to the United States as a lawful permanent resident.