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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



E₂

Date: JUL 11 2011

Office: HOUSTON, TX

File: 

IN RE:

Applicant: 

APPLICATION: Application for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 321 (repealed).

ON BEHALF OF APPLICANT:

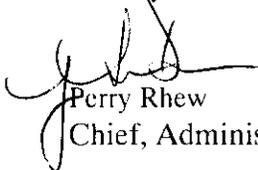
SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Houston, Texas, and the matter came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed on December 28, 2010. The applicant filed a Form I-290B, Notice of Appeal to the AAO, seeking reopening and reconsideration of the AAO's decision. The applicant's motion will be dismissed because it was untimely filed.

According to the regulation at 8 C.F.R. § 103.5(a)(1)(i), a motion to reopen or reconsider must be filed 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). Delay in filing a motion to reopen may be excused in the exercise of discretion if the delay was reasonable and beyond the applicant's control. *See* 8 C.F.R. § 103.5(a)(1)(i).

The AAO's decision in this matter was issued on December 28, 2010. The AAO properly gave notice to the applicant that he had 30 days to file any motion to reopen or reconsider and indicated that it had to be filed with the field office that originally decided the applicant's case. The applicant nonetheless filed the Form I-290B directly with the AAO, and it was not received by the Houston Field Office until February 15, 2011, which was more than 33 days after the AAO decision was issued. Accordingly, the motion was untimely filed and must be dismissed for filing to meet applicable requirements pursuant to 8 C.F.R. § 103.5(a)(4).¹

ORDER: The motion is dismissed. The application remains denied.

¹ Neither the Immigration and Nationality Act nor the regulations grant authority to extend the 33-day time limit for filing a motion to reconsider. The applicant's failure to timely file this motion was not beyond his control, so his failure to file within 30 days will not be excused in the exercise of discretion. The AAO further notes that the motion is not accompanied by contemporaneous, relevant evidence that would warrant reopening of the matter. Instead, the motion is accompanied by two declarations executed by his mother and grandmother. These declarations do not establish that the applicant was in his mother's "actual, uncontested custody" such that the applicant may have derived U.S. citizenship upon her naturalization under former section 321 of the Act.