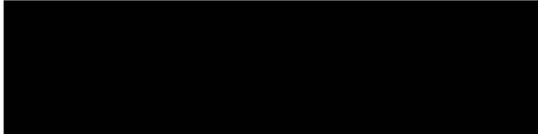




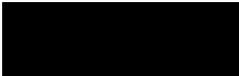
U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy**



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FILE:  OFFICE: SAN FRANCISCO (SACRAMENTO) Date: **DEC 19 2006**

IN RE: APPLICANT: 

APPLICATION: Application to Preserve Residence for Naturalization Purposes Under section 316(b) of the Immigration and Nationality Act, 8 U.S.C. § 1427.

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 District Director, San Francisco, CA, denied the application and the matter 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 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). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a Citizenship and Immigration Services (CIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the director issued the decision with a date of March 21, 2006. However, as observed by the applicant, the decision was not mailed until April 20, 2006. The applicant explains that the U.S. Postal Service attempted to deliver the decision on April 22, 2006, yet no one was present to receive it and a delivery notice was left at the applicant's address. The applicant states that he was unable to pick up the decision from the Post Office until May 5, 2006.

However, the applicant has not provided any documentation to support that the post office attempted to deliver the decision on April 22, 2006, or to show that he received the decision on May 5, 2006. The only evidence in CIS records that reflects the date of service of the decision consists of a Postal Service Form 3800, Certified Mail Receipt, that reflects that CIS mailed the decision on April 20, 2006. The regulation at 8 C.F.R. § 103.5(b) notes that service is complete upon mailing. Thus, the applicant had 33 days from the date of mailing to file the present appeal, and the appeal must have been received by CIS with the appropriate fee no later than Tuesday, May 23, 2006. As observed by the applicant, the director gave notice that the applicant had 33 days in which to properly file the appeal, due to the fact that the decision was mailed.

According to the date stamp on the Form I-290B Notice of Appeal, it was received by the CIS Sacramento District Office with the correct fee on Thursday, May 25, 2006, 35 days after the decision was mailed. Therefore, the appeal was untimely filed. Pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(i), the AAO lacks discretion to accept a late 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.