



U.S. Citizenship
and Immigration
Services

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invasion of personal privacy
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DATE: JUN 09 2006

FILE:

OFFICE: KANSAS CITY (ST. LOUIS), MO

IN RE:

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

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application to preserve residence for naturalization purposes was denied by the District Director, Kansas City, Missouri. 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 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 district director issued a decision on December 30, 2005. The record reflects that the applicant attempted to file an appeal with the St. Louis, Missouri U.S. Citizenship and Immigration Services (CIS) office on January 13, 2006. The appeal was rejected, however, as improperly filed (improper fee and failure to file on Form I-290B) pursuant to 8 C.F.R. §§ 103.2(a)(7) and 103.3(a)(2). The applicant subsequently filed a Form I-290B appeal with correct fee, which was received by the St. Louis, Missouri CIS office on April 5, 2006, more than 33 days after the district director's decision was issued.

8 C.F.R. § 103.2(a)(7)(i) states in pertinent part that:

An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204 or part 245 or part 245a of this chapter, shall be regarded as properly filed when so stamped, if it is signed and executed and the required filing fee is attached or a waiver of the filing fee is granted. An application or petition which is not properly signed or is submitted with the wrong filing fee shall be rejected as improperly filed. Rejected applications and petitions, and ones in which the check or other financial instrument used to pay the filing fee is subsequently returned as non-payable will not retain a filing date.

8 C.F.R. § 103.3(a)(2)(i) states in pertinent part:

The affected party shall file an appeal on Form I-290B. Except as otherwise provided in this chapter, the affected party must pay the fee required by § 103.7 of this part. The affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.

The record reflects that the applicant filed his appeal with correct fee on Form I-290B more than 33 days after the date of the district director's decision. The appeal is therefore untimely.

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 official having jurisdiction over a motion is the official who made the last decision in the proceeding. 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.