



U.S. Citizenship
and Immigration
Services

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MAR 22 2007

FILE:

[REDACTED]

Office: CLEVELAND, OH

Date:

IN RE:

Applicant:

[REDACTED]

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 application was denied by the District Director, Cleveland, Ohio. 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 record reflects that the district director issued the applicant's decision on November 24, 2006. The applicant initially sent her Notice of Appeal to the Administrative Appeals Office (Form I-290B) to the AAO in error. An appeal is not properly filed until the proper office, in this case the Cleveland, Ohio District Office, receives it. The record reflects that the appeal was received by the Cleveland, Ohio District Office on January 5, 2007, 42 days after the decision was issued. Accordingly, the appeal was untimely filed.

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. See 8 C.F.R. § 103.5(a)(1)(ii). In the present matter, 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.