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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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Services

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JUL 06 2009

FILE: [REDACTED] Office: NEWARK, NJ 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(b).

ON BEHALF OF APPLICANT:

[REDACTED]

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.

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application to preserve residence for naturalization purposes was denied by the District Director, Newark, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected pursuant to 8 C.F.R. §§ 103.3(a)(2)(v)(B)(1), 103.2(b)(15) and 103.3.

The applicant seeks to preserve his residence for naturalization purposes pursuant to section 316(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1427(b). As the applicant did not establish that he had a period of physical presence in the United States or that his employer is an American firm or corporation, the director requested additional evidence on June 4, 2003. On July 22, 2003, the director denied the application "for lack of prosecution" because the applicant failed to respond to the June 4, 2003 request for evidence.

The regulation at 8 C.F.R. § 103.3(a)(2) requires an affected party to file the complete appeal within 30 days after service of the decision, or, in accordance with 8 C.F.R. § 103.5a(b), within 33 days if the decision was served by mail. The record indicates that the decision of the director was mailed to the applicant on Tuesday, July 22, 2003. The applicant filed an appeal with U.S. Citizenship and Immigration Services on Tuesday, August 26, 2003, 35 days after the decision was served by mail.<sup>1</sup>

Thus, the appeal was not timely filed and must be rejected on these grounds pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(1).

Furthermore, as noted above, the director denied the application due to "lack of prosecution," or abandonment, because the applicant failed to respond to a request for evidence by the date specified in the request. 8 C.F.R. § 103.2(b)(13). However, the applicant may not appeal a denial due to abandonment. 8 C.F.R. § 103.2(b)(15). Accordingly, the AAO must also reject the appeal for lack of jurisdiction. *See* 8 C.F.R. § 103.3. It is noted that the applicant could have filed a motion in response to the abandonment denial, but he did not. 8 C.F.R. § 103.2(b)(15).<sup>2</sup>

**ORDER:** The appeal is rejected.

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<sup>1</sup>It is noted that the applicant apparently attempted to file this appeal directly with the AAO on or about August 19, 2003. However, the regulations at 8 C.F.R. § 103.2(a)(6) and 8 C.F.R. § 103.3(a)(2)(i) require that the instant appeal be filed within 30 days with the Newark District Office, not directly with the AAO. The district office only forwards appeals, such as the present matter, to the AAO if it will not be taking favorable action or if it decides that favorable action is not warranted. 8 C.F.R. § 103.3(a)(2)(iii). The applicant's attempt to file this appeal directly with the AAO did not establish a receipt date of August 19, 2003, as this attempted filing violated the regulations. Therefore, the receipt date for the instant motion was the day it was received by the Newark District Office, August 26, 2003, or 35 days after the decision was served by mail.

<sup>2</sup>As this appeal is also being rejected for lack of jurisdiction, the appeal will not be remanded to the district director for consideration as a motion pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(2).