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**U.S. Citizenship
and Immigration
Services**

E2

FILE:

Office: NEW YORK, NY

Date: **OCT 26 2005**

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship pursuant to Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431.

ON BEHALF OF APPLICANT:

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, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record reflects that the district director issued the applicant's denial decision on August 15, 2002. The decision properly gave notice to the applicant and counsel, that they had 33 days to file the appeal. The applicant's appeal was received by U.S. Citizenship and Immigration Services on November 19, 2002, more than 33 days after the denial decision was issued.

In a letter dated September 12, 2002, counsel stated that the applicant's U.S. citizen parent was outside of the country. On this basis, counsel requested an additional thirty days to file the applicant's appeal. The AAO notes that 8 C.F.R. § 103.3(a)(2)(v)(B)(2) discusses requirements for treating an untimely appeal as a motion to reopen. However, it is the district director, not the AAO who has jurisdiction to consider whether an untimely appeal meets the requirements of a motion to reopen.¹ The district director forwarded the appeal to the AAO without treating it as a motion.

8 C.F.R. § 103.3(a)(2)(i) states clearly that, "[t]he affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 [33] days after service of the decision." 8 C.F.R. § 103.3(a)(2)(v)(B)(2) provides further that an appeal which is not filed with the AAO within the time allowed must be rejected as improperly filed. The record reflects that the present appeal was untimely filed. The appeal must therefore be rejected.

ORDER: The appeal is rejected.

¹ The AAO notes that the present appeal was also filed after the extended thirty-day period requested by counsel.