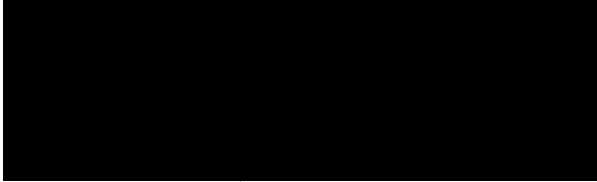


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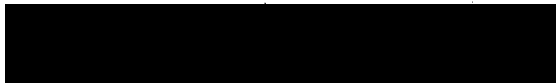
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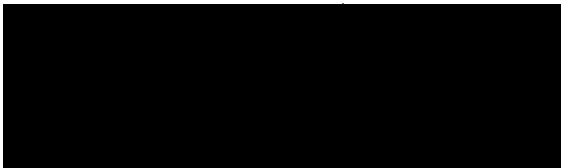
Date: AUG 08 2006

IN RE:



PETITION: Application for Certificate of Citizenship

ON BEHALF OF PETITIONER:



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, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The AAO does not have jurisdiction over this matter; hence, the appeal will be rejected.

The applicant submitted a Form N-600 Application for Citizenship on September 16, 2002. The applicant twice failed to appear for her interview, on May 12, 2004 and October 21, 2004. On October 26, 2004, the district director denied the application as abandoned, pursuant to 8 CFR § 103.2(b)(13). On November 30, 2004, the applicant submitted a Form I-290B Notice of Appeal accompanied by the proper fee to the district director. The district director forwarded the appeal to the AAO; however, the AAO lacks jurisdiction over this matter, because the appeal was not timely filed, and because the denial was due to abandonment.

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). Citizenship and Immigration Services (CIS) received the instant appeal 35 days after the decision was issued. The appeal was thus untimely. 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 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.

Furthermore, regarding the denial due to abandonment, 8 C.F.R. § 103.2(b)(13) states, in pertinent part:

Effect of failure to respond to a request for evidence or appearance. If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied.

8 C.F.R. § 103.2(b)(15) states:

Effect of withdrawal or denial due to abandonment. **[A] denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under Sec. 103.5. Withdrawal or denial due to abandonment does not preclude the filing of a new application or petition with a new fee.** However, the priority or processing date of a withdrawn or abandoned application or petition may not be applied to a later application or petition. Withdrawal or denial due to abandonment shall not itself affect the new proceeding; but the facts and circumstances surrounding the prior application or petition shall otherwise be material to the new application or petition. (Emphasis added).

Because the applicant failed to appear on two different interview dates, the district director determined that the applicant's Form N-600 Application for Certificate of Citizenship was abandoned. The application was therefore denied, pursuant to 8 C.F.R. § 103.2(b)(13). Denials due to abandonment may be challenged in a motion to reopen before the office that rendered the decision, in this case, the district director, pursuant to

8 C.F.R. § 103.5(a)(2). Because a denial due to abandonment cannot be appealed to the AAO, the present appeal must be rejected.¹

ORDER: The appeal is rejected.

¹ The rejection of this appeal does not preclude the applicant from filing a new N-600 Application or a Motion to Reopen, as set forth in 8 C.F.R. § 103.2(b)(15), at the CIS Miami district office.