



U.S. Citizenship  
and Immigration  
Services

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prevent clearly unwarranted  
invasion of personal privacy

*EL*

FILE:

Office: HARLINGEN, TX

Date: NOV 30 2006

IN RE:

Applicant:

APPLICATION: Application for Certificate of Citizenship pursuant to former Section 301(a)(7) of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1401(a)(7)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision 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, Harlingen, Texas and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

The record reflects that the applicant was born on December 22, 1964 in Mexico. The applicant's father, [REDACTED] was born on July 12, 1939 in Alamo, Texas. The applicant seeks a certificate of citizenship as the child of a U.S. citizen father under section 301(a)(7) of the Immigration and Nationality Act (the Act), as amended.

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 with the office that issued the denial within 30 days of service of the decision. If the decision is mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the district director issued his decision on June 1, 2005, in which he notified the applicant that he had 30 days to file an appeal with the AAO in Washington, D.C. While the director incorrectly informed the applicant that he should file the Form I-290B, Notice of Appeal with the Administrative Appeals Office, the AAO, nevertheless, did not receive the appeal until July 8, 2005, 37 days after the director's denial of the application. Therefore, the petitioner has not met the filing requirements for an appeal.

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, 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.

As the appeal was untimely filed, the appeal must be rejected.

**ORDER:** The appeal is rejected.