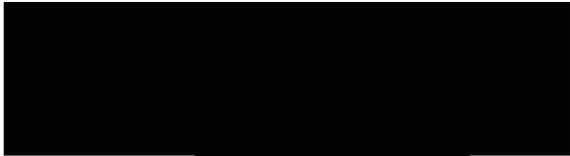


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invasion of personal privacy**



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

PUBLIC COPY



EL

JAN 29 2007

FILE:



OFFICE: CALIFORNIA SERVICE CENTER Date:

IN RE:

APPLICANT:



APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431.

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 Director, California Service Center, denied the application and 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 of 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). In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a Citizenship and Immigration Services (CIS) office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the appeal shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

The record indicates that the director issued the decision on February 24, 2006. It is noted that the director gave notice to the applicant that he had 30 days in which to properly file the appeal. According to the date stamp on the Form I-290B Notice of Appeal, it was received by CIS on April 20, 2006, 55 days after the decision was issued.

The applicant requests that the AAO treat the appeal as timely. The applicant explains that, though the decision was dated February 24, 2006, the director's first attempt to serve it on the applicant was unsuccessful. The applicant provides a copy of an envelope on which the California Service Center is listed as the sender, yet it contains no addressee. The envelope indicates that it was mailed on February 28, 2006, yet it was returned to the California Service Center as undeliverable. Though the envelope is stamped with a mailing date of February 28, 2006, four days after the date of the decision, the applicant has not submitted sufficient evidence to establish that it represents an attempt by the director to serve the decision. Specifically, the envelope contains no information to connect it to the applicant or the decision, such as the applicant's name, address, alien number, or other identifying information. Thus, from the evidence submitted, the AAO cannot conclude that the envelope represents a failed attempt to serve the decision.

The applicant states that the director made a second attempt to serve the decision on March 17, 2006, which was successful. The applicant provided a copy of a second envelope, addressed from the California Service Center to the applicant, that reflects that something was mailed to the applicant on March 17, 2006. However, from the documentation submitted, the AAO is unable to determine what were the contents of the envelope. It is again noted that the present appeal was received on April 20, 2006. Thus, the appeal was received 34 days after March 17, 2006, the date of the second envelope. Therefore, even if the director did serve the decision on March 17, 2006, the appeal was not filed with the permitted 33-day period. *See* 8 C.F.R. § 103.3(a)(2)(i).

Accordingly, the appeal was untimely filed. Pursuant to the regulation at 8 C.F.R. § 103.3(a)(2)(i), the AAO lacks discretion to accept a late 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 director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The 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.