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U.S. Citizenship  
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[Redacted]

FILE:

[Redacted]

Office: PHILADELPHIA, PA

Date:

MAY 21 2007

IN RE:

Applicant:

[Redacted]

APPLICATION: Application for Certificate of Citizenship pursuant to former Section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432, now repealed

ON BEHALF OF APPLICANT:

[Redacted]

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 Acting District Director, Philadelphia, Pennsylvania 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 April 14, 1975 in the Dominican Republic. The applicant's father, [REDACTED], also born in the Dominican Republic, became a U.S. citizen on August 3, 1982 when the applicant was seven years old. The applicant's parents were married at the time of his birth. They divorced on September 20, 1991, when he was 16 years old. The applicant was admitted to the United States as a lawful permanent resident on September 11, 1984 at the age of nine years. The applicant seeks a certificate of citizenship under former section 321 of the Act based on his father's naturalization.

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 acting district director issued her decision on August 28, 2006 and notified the applicant that he had 33 days to submit the Form I-290B, Notice of Appeal to the Administrative Appeals Office, to the Philadelphia District Office. The applicant, however, filed the Form I-290B with the Vermont Service Center on September 28, 2006. Accordingly, the appeal did not reach the Philadelphia District Office until October 16, 2006, 49 days after the acting district director's denial of the application. Therefore, the applicant 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 acting district director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The acting 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.