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U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: EL PASO, TX

Date:

DEC 23 2008

IN RE:

[REDACTED]

APPLICATION:

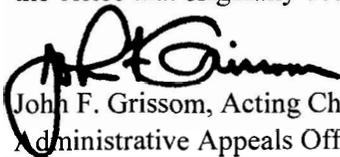
Application for Certificate of Citizenship under Section 309 of the Immigration and Nationality Act, 8 U.S.C. § 1409

ON BEHALF OF APPLICANT:

[REDACTED]

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.


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, El Paso, Texas, and 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 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). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the field office director issued the decision in this case on October 30, 2007. It is noted that the director properly gave notice to the applicant that it had 33 days to file the appeal. The Form I290B, Notice of Appeal, and fee, was submitted by the applicant on December 4, 2007, more than 33 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing 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.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. The applicant does not raise any new argument or submit any additional evidence on appeal to warrant reopening or reconsideration.¹ Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

¹ The applicant, through counsel, claims that he was legitimated in accordance with section 12.02 of the Texas Family Code. That section, in effect since January 1, 1974, requires the marriage or putative marriage of the natural parents or, alternatively, compliance with the requirements of section 13 of the Texas Family Code. There is no evidence in the record indicating such compliance. The applicant further claims that Mexico has eliminated the distinctions between legitimate or illegitimate children. Under article 130 of the Mexican Constitution, a child born out-of-wedlock becomes legitimated only upon the civil marriage of his or her parents. *See Matter of M-D-*, 3 I&N Dec. 485 (BIA 1949); *see also, Matter of Hernandez*, 14 I&N Dec. 608 (BIA 1974) and *Matter of Rodriguez-Cruz*, 18 I&N Dec. 72 (BIA 1981).

As the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

ORDER: The appeal is rejected.