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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

Office: HOUSTON, TX

Date: FEB 13 2008

IN RE:

Applicant:

[REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401.

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Houston, 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 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 decision in the applicant's case is dated March 28, 2007. It is noted that the director gave notice to the applicant that an appeal of the decision had to be filed within 33 days with the local office, and accompanied by the appropriate fee. The applicant's appeal is dated August 3, 2007 and received on August 6, 2007, more than 33 days after the decision in his case 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).

The AAO notes that the application was rejected by the director, pursuant to 8 C.F.R. § 341.6, because the applicant's claim had previously been denied. The appeal is not accompanied by any new evidence or argument to overcome the director's initial finding that the applicant's father was not physically present in the United States for the required period. The untimely appeal therefore does not meet the requirements of a motion to reopen or a motion to reconsider. As the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

**ORDER:** The appeal is rejected.