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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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Ez



FILE:



OFFICE: YAKIMA, WA

DATE:

JUL 16 2008

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 Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, Yakima, Washington. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed. The matter will be returned to the field office director for consideration as a motion to reopen and for issuance of a new decision.

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. 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. 8 C.F.R. § 103.2(a)(7)(i).

The record reflects that the field office director issued the applicant's decision on October 19, 2007. Certified Mail receipt evidence reflects that the decision was received by the applicant on October 22, 2007. It is noted that the field office director properly gave notice to the applicant that he had 33 days to file the appeal. The appeal was received by the Yakima, Washington field office on November 28, 2007 - 37 days after the denial 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).

In the present matter, the Form N-600 was denied on the basis that the applicant had failed to submit requested evidence of his father's U.S. citizenship. The applicant's untimely appeal contains a brief statement and a copy of a California birth certificate and an American Foreign Service, Certificate of Identity and Registration. The AAO finds that the untimely appeal meets the requirements for consideration as a motion to reopen. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the field office director, Yakima, Washington. 8 C.F.R. § 103.5(a)(1)(ii). Therefore, the field office director must consider the untimely appeal as a motion to reopen and render a new decision accordingly.

**ORDER:** The appeal is rejected. The matter is returned to the field office director for consideration as a motion to reopen and for issuance of a new decision.