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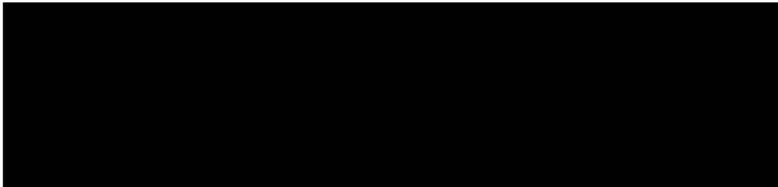
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:



Office: NEW YORK, NY

Date:

MAR 24 2008

IN RE:

Applicant:



APPLICATION:

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

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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, New York, New York, denied the Form N-600, Application for Certificate of Citizenship. 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 after service of the unfavorable decision. The appeal must be submitted to the correct office, and must be accompanied by the required filing fee. 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 district director issued the decision on November 29, 2004. It is noted that the director properly gave notice to the applicant that he had 33 days to file the appeal with the local office. The record contains a receipt indicating the appeal fee was collected on May 24, 2005, more than 33 days from the date of issuance of the decision. Therefore, the appeal is untimely.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. As the appeal was untimely filed, the appeal must be rejected. Nevertheless, 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 applicant's father indicates that the applicant has obtained a U.S. passport and that he is residing abroad in the custody of his mother. The AAO notes that section 104 of the Act, 8 U.S.C. § 1104, vests the Secretary of State with jurisdiction over nationality determinations of persons present abroad. The Secretary of Homeland Security, and USCIS, therefore has no jurisdiction over the applicant's claim. The appeal is not accompanied by any additional evidence or brief addressing the issue of jurisdiction or otherwise overcoming the concerns raised by the director. The untimely appeal therefore does not meet the requirements of a motion to reopen or reconsider, and there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

ORDER: The appeal is rejected.