

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

E2



FILE:



Office: DENVER, CO

Date: APR 03 2009

IN RE:



APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431.

ON BEHALF OF APPLICANT:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Denver, Colorado, 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 district director issued the decision on January 11, 2007. It is noted that the field office director properly gave notice to the applicant that it had 33 days to file the appeal. The Notice of Appeal is dated February 1, 2008 and was received by the director on February 13, 2008, more than a year 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).

The applicant seeks a Certificate of Citizenship claiming eligibility under section 320 of the Act, 8 U.S.C. § 1433. The Child Citizenship Act (CCA) amended sections 320 and 322 of the Act, and repealed section 321 of the former Act. The CCA is not retroactive. *See Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153 (BIA 2001). The provisions of the Act amended by the CCA apply only to persons who were not yet 18 years old as of February 27, 2001. Because the applicant was over the age of 18 on February 27, 2001, she is not eligible for the benefits of section 320 of the amended Act. The AAO notes that the applicant does not appear eligible to derive U.S. citizenship from her adoptive parents under any other provision of law.¹

¹ Sections 320 and 321 of the former Act relate to the derivation of U.S. citizenship upon the naturalization of a parent. These sections are inapplicable to the applicant's case because her parent is a native-born U.S. citizen. Section 322 of the former Act is likewise inapplicable because it required that the certificate of citizenship application be filed, adjudicated, and approved with the oath of allegiance administered before the applicant's 18th birthday.

Here, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider. Therefore, the appeal will be rejected as untimely filed.

ORDER: The appeal is rejected.