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

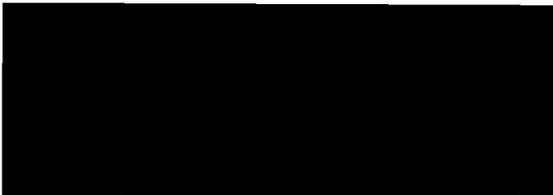
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U.S. Citizenship  
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FILE:

Office: BUFFALO, NY

Date: APR 03 2009

IN RE:



APPLICATION: Application for Certificate of Citizenship under Section 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433.

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.

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).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Buffalo, New York, 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 on August 27, 2008. 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 September 29, 2008, 34 days after the decision was issued, and received by the director on October 6, 2008, 41 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 seeks a Certificate of Citizenship claiming eligibility under section 322 of the Act, 8 U.S.C. § 1433. Section 322(a)(3) of the Act, 8 U.S.C. § 1433(a)(3) and the regulations promulgated thereunder, at 8 C.F.R. § 322.2(a)(3), require that a certificate of citizenship application be filed, adjudicated, and approved with the oath of allegiance administered before the child's 18<sup>th</sup> birthday. The applicant is ineligible for citizenship under the cited provision because she is already 18. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). The applicant is ineligible for citizenship under the claimed provision. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).

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

**ORDER:** The appeal is rejected.