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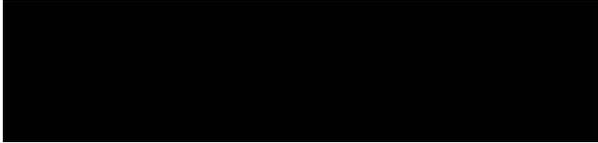
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Immigration Appeals MS 2090
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CHICAGO Date: APR 23 2009

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 321 of the former 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.

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 Interim District Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed. The AAO will return the matter to the director for consideration as a motion to reopen.

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 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 interim district director issued the decision on March 21, 2003. It is noted that the director properly gave notice to the applicant that she had 30 days to file the appeal. The Notice of Appeal (Form I-290B) in this case was dated March 31, 2003, but was not received by the appropriate office until April 30, 2003, more than 30 days after the issuance of the director's decision.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. The AAO is therefore without jurisdiction to consider the appeal, and the appeal must be rejected.

The AAO notes that 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). The appeal in this case is accompanied by a statement from the applicant, as well as a copy of her father's naturalization certificate, her U.S. passport, her father's marriage and death certificate. The untimely appeal therefore meets the requirements of 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 district director. *See* 8 C.F.R. § 103.5(a)(1)(ii). Therefore, the district 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 district director for consideration as a motion to reopen and entry of a new decision which, if adverse to the applicant, is to be certified to the AAO for review.