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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

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FILE:



Office: HOUSTON, TX

Date:

JUL 29 2009

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Section 321 of the former
Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).

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, Houston, Texas, 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 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 February 4, 2009. It is noted that the field office director properly gave notice to the applicant that she had 33 days to file the appeal, and that the appeal should not be sent directly to the AAO. *See* Decision of the Field Office Director. The Form I-290B, Notice of Appeal, is dated February 10, 2009, but was erroneously mailed directly to the AAO, and not received by the field office director until March 10, 2009,¹ more than 33 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).

The appeal in this case does not contain any new facts to be proved or state reasons for reconsideration that are supported by relevant precedent. The applicant was under 18 years of age when the Child Citizenship Act of 2000 (CCA) went into effect. As such, the amended provisions of section 320 of the Act, 8 U.S.C. § 1431, apply to her case.² The applicant was born in the Philippines in 1990 to [REDACTED] and [REDACTED]. At issue is whether the

¹ The AAO notes that the appeal was mailed to the field office on March 3, 2009, but rejected on March 4, 2009 because it lacked the appropriate form of payment. The correct fee payment was not received until March 10, 2009.

² Section 320 of the Act, 8 U.S.C. § 1431, states in pertinent part that:

- (a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:
- (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
 - (2) The child is under the age of eighteen years.
 - (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

applicant's parents were married at the time of the applicant's birth.³ The applicant may automatically acquire U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431, through her father only if she was born in wedlock or was legitimated.⁴

On appeal, the applicant indicates that her parents were in a common law marriage in Saipan, CNMI. The applicant provides an excerpt from CNMI law in support of her claim. The AAO notes the law in the Philippines (the father's and the applicant's place of residence at the time of her birth) does not recognize a "common law" marriage, and that marriage of the parents is required to legitimate a child under Philippines law. *See Matter of Espiritu*, 16 I&N Dec. 426 (BIA 1977). The AAO notes further that the applicant's father was married in CNMI a few months after the applicant's birth. There is no evidence that he was previously married to the applicant's mother, or that, if he was married by "common law," that the marriage was dissolved.

The applicant does not provide any explanation for the discrepancies in the record regarding her father's marriage or otherwise overcome the deficiencies in her citizenship claim. The untimely appeal does not meet the requirements of a motion to reconsider. The appeal will therefore be rejected.

ORDER: The appeal is rejected.

³ The Form N-600, Application for Certificate of Citizenship, indicates that the applicant's parents were not married at the time of the applicant's birth, and that the applicant's father was married only once in 1990 to someone other than the applicant's mother. The applicant's birth certificate, however, indicates that the applicant's parents were married in Saipan in 1988. The record contains a letter from the Superior Court of the Commonwealth of the Northern Mariana Islands (CNMI) indicating there is no record of a marriage certificate for the applicant's parents. There is also a statement by the applicant's father stating that he was never married to the applicant's mother.

⁴ Section 101(c) of the Act, 8 U.S.C. § 1101(c) states, in pertinent part, that for Title III naturalization and citizenship purposes:

The term "child" means an unmarried person under twenty-one years of age and includes a child legitimated under the law of the child's residence or domicile, or under the law of the father's residence or domicile, whether in the United States or elsewhere . . . if such legitimation . . . takes place before the child reaches the age of 16 years . . . and the child is in the legal custody of the legitimating . . . parent or parents at the time of such legitimation