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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: [REDACTED] Office: EL PASO Date: **MAY 19 2009**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under section 301(g) of the Immigration and Nationality Act, 8 U.S.C. § 1401(g).

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, El Paso, 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 December 11, 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 was express-mailed by the applicant's counsel on January 13, 2009, and received by the director on January 14, 2009, 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 meet the requirements of a motion to reopen or reconsider. First, the AAO notes that the untimely appeal does not contain any new evidence. The applicant also cannot establish that the decision was incorrect. In this regard, the applicant claims that her siblings' applications for citizenship have been granted based upon the same facts. *See* Applicant's Appeal Brief. The AAO notes, however, that the applicant's siblings were born in 2002 and 2005, respectively. The applicant, on the other hand, was born in 1999 and is required to establish that her father was physically present in the United States for five years prior to her birth (in 1999), two of which after the age of 14 (after March 22, 1980). *See* Section 301(g) of the Immigration and Nationality Act, 8 U.S.C. § 1401(g). The AAO notes that evidence of the applicant's father's physical presence in the United States after the applicant's birth in 1999 is irrelevant to her citizenship claim.¹ Even considering evidence not addressed in the director's decision, such as the

¹ The AAO notes that this evidence may have been relevant to the applicant's siblings' citizenship claims given that they were born in 2002 and 2005.

transcripts from the University of Southern California or The Orme School, the record does not establish that the applicant's father was physically present in the United States for five years prior to 1999. The untimely appeal therefore does not meet the requirements of a motion to reopen or reconsider, and need not be considered as such. The appeal will be rejected.

ORDER: The appeal is rejected.