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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: PHILADELPHIA, PA Date: OCT 05 2009

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship pursuant to Section 320 and Former Section 321 of the Immigration and Nationality Act, 8 U.S.C. §§ 1431 and 1432

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision 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 or reopen, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Philadelphia, Pennsylvania 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 July 20, 2009 and gave notice to the applicant that he had 33 days to file an appeal. The applicant's Form I-290B, Notice of Appeal or Motion was received by U.S. Citizenship and Immigration Services (USCIS) on August 24, 2009, 35 days after the decision was issued.¹ Accordingly, the appeal was untimely filed and will be rejected.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the 33 day time limit for filing an appeal. However, 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 the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

On appeal, the applicant submits no additional evidence or documentation to establish his claim to citizenship. Neither does he offer any reasons for reconsideration. Accordingly, the untimely appeal does not meet the requirements of a motion to reopen or reconsider.

ORDER: The appeal is rejected.

¹ The AAO notes that the record contains a FedEx U.S. Airbill indicating that the Form I-290B was mailed on August 22, 2009, which was the 33rd day after the decision was rendered. However, as previously stated, the date of filing is the date of receipt, not the date of mailing. As the Form I-290B was mailed on the 33rd day it would be impossible for it to have been received and filed timely.