

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



E2

FILE: [REDACTED] Office: HARLINGEN Date: APR 01 2010

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Former Section 301(a)(7) of the Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7) (1963).

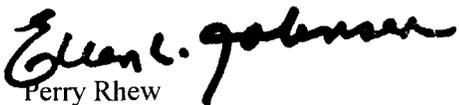
ON BEHALF OF APPLICANT:



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 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 Harlingen, Texas Field Office Director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as *untimely filed*.

The applicant seeks a certificate of citizenship under former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (as in effect at the time of the applicant's birth in 1963). The applicant claims he acquired citizenship at birth through his father. The field office director determined that the applicant failed to establish that his father was physically present in the United States for the periods required to transmit citizenship to the applicant under former section 301(a)(7) of the Act.

An appeal must be filed within 30 days after service of the decision. 8 C.F.R. § 103.3(a)(2)(i). If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

In this case, the field office director denied the application on June 16, 2008. The field office director properly notified the applicant that if he chose to appeal the decision, he would have to file his appeal with the Harlingen Field Office within 30 days. Counsel did not properly file the appeal until July 30, 2008, which was 44 days after the field office director issued her decision. Consequently, the appeal must be rejected as *untimely filed*.

We note that the applicant's *untimely* appeal does not meet the requirements of a motion to reopen or reconsider. The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) directs 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 provided 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 U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* A motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

With the *untimely* appeal, counsel attached copies of documents previously submitted with the application and one additional affidavit. The additional affidavit does not warrant reopening of the case because it is dated July 10, 2007; was available nearly a year before the field office director issued her decision; but was not submitted while the application was pending before the field office director. In his statement on the Form I-290B, Notice of Appeal, counsel cites no precedent decisions to establish that the field office director's decision erroneously applied pertinent law or USCIS policy. Accordingly, the applicant's *untimely* appeal does not meet the requirements for a motion to reopen or reconsider and will be rejected.

ORDER: The appeal is rejected.