

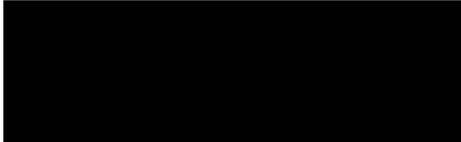
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

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FILE: Office: FRESNO, CA Date: **JAN 21 2010**

IN RE: Applicant:

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:

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 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, Fresno, California, 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 field office director issued the decision on March 27, 2009. It is noted that the field office director properly gave notice to the applicant that he had 33 days to file the appeal with the field office. *See* Decision of the Field Office Director. The Form I-290B, Notice of Appeal, was received by the field office on May 6, 2009, which was 41 days after the decision was issued. Accordingly, the appeal was untimely filed and must be rejected.<sup>1</sup>

**ORDER:** The appeal is rejected.

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<sup>1</sup> The AAO notes that, although the applicant submitted a copy of his U.S. passport, there is no evidence in the record to support his claim to U.S. citizenship. Section 301(g) of the former Act, as in effect at the time of the applicant's birth, required that he establish that his father was present in the United States for 10 years prior to his birth (in 1980). The applicant claims his father has been in the United States only since 1972.

The U.S. Citizenship and Immigration Services (USCIS) Adjudicator's Field Manual at § 71.1(e) instructs, in pertinent part, that

An unexpired United States passport . . . is now considered prima facie evidence of U.S. citizenship . . . If after review there are differences or discrepancies between the USCIS information and the Passport Office records which would indicate that the application should not be approved, no action should be taken until the Passport Office has an opportunity to review and decide whether to revoke the passport.

The field office director shall, in accordance with the Adjudicator's Field Manual, request that the Passport Office review and decide whether to revoke the applicant's passport.