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

U.S. Citizenship and Immigration Services

E2

[redacted]

FILE: [redacted] Office: HARLINGEN, TEXAS Date: JUL 15 2010

IN RE: [redacted]

APPLICATION: Application for Certificate of Citizenship under section 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Harlingen, 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 director issued the decision on October 2, 2009. *See Decision of the Director*, dated Oct. 2, 2009. The director properly gave notice to the applicant that he had 33 days to file the appeal. *See id.* The appeal was received by the director on November 5, 2009, which was 34 days after the director's decision was issued. Accordingly, the appeal was untimely filed. Because neither the Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal, the appeal must be rejected.

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. *See* 8 C.F.R. § 103.3(a)(2)(v)(B)(2). 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. 8 C.F.R. § 103.5(a)(3). 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. *Id.* A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The applicant presents no new facts to be proved or reasons for reconsideration supported by any pertinent precedent decisions. On the Form I-290B, Notice of Appeal, counsel indicated that he would file a brief or evidence within 30 days. To date, over seven months later, the AAO has received nothing further from counsel or the applicant. The untimely appeal does not meet the requirements of a motion to reopen or to reconsider, and will be rejected.

ORDER: The appeal is rejected.