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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: TAMPA, FL

Date: **MAY 03 2010**

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act; 8 U.S.C. §1431.

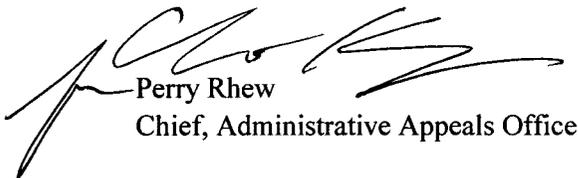
ON BEHALF OF APPLICANT:

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 District Director, Tampa, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed. The AAO will return the matter to the director for consideration as a motion to reopen.

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 July 9, 2009. It is noted that the director properly gave notice to the applicant that he had 33 days to file the appeal. *See* Decision of the District Director. The Form I-290B, Notice of Appeal, was not properly filed until September 9, 2009, more than 33 days after the decision was issued. Accordingly, the appeal was untimely filed and must be rejected.

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 that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The district director denied the application due to abandonment. The director found that the applicant had failed to provide evidence of her father's legitimation. The applicant claims that she was legitimated under the laws of Florida and, in support of her claim, she submits a copy of a Final Judgment Establishing Paternity entered by the Family Court in Pasco County, Florida. The appeal therefore meets the requirements of a motion to reopen. The matter will be returned to the director for consideration as a motion to reopen.

ORDER: The appeal is rejected. The matter is returned to the director for consideration as a motion to reopen.