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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: BUFFALO, NEW YORK

Date: MAY 17 2010

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (1978).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Buffalo, New York. The Administrative Appeals Office (AAO) dismissed the applicant's appeal and affirmed its decision in a subsequently filed motion to reopen. The matter is again before the AAO on a motion to reopen. The motion will be dismissed and the previous decisions affirmed.

The record reflects that the applicant was born in the Dominican Republic on December 24, 1978. The applicant's mother, [REDACTED], was born in the Dominican Republic. The applicant's father, [REDACTED], was born in the Dominican Republic and became a naturalized United States (U.S.) citizen on April 20, 1996. The record reflects that the applicant's parents were married in the Dominican Republic, and that they obtained a divorce in the Dominican Republic on September 9, 1988. The applicant was admitted into the United States on January 21, 1984 pursuant to a relative petition filed by his father. The applicant seeks a certificate of citizenship under former section 321 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1432 (1978).

The director concluded that the applicant had failed to establish that he resided in the United States in the legal custody of his U.S. citizen parent, as required by former section 321 of the Act. The N-600 Application for Certificate of Citizenship was denied accordingly. *Decision of Director*, Buffalo District Office, dated September 29, 2004. The applicant appealed the director's decision, and the AAO dismissed the appeal on April 26, 2005. The applicant filed a second N-600 in April 2005, which the director denied. *Decision of the Director*, Buffalo District Office, dated May 16, 2005. The applicant filed a motion in response to the AAO's decision of April 26, 2005, and the AAO affirmed its prior determination in a decision dated September 19, 2005, which the applicant now seeks to have reopened.

With the present motion, the applicant submits new evidence, including an undated affidavit from his father as well as a sworn statement from his father that was taken before the Court of Peace of the Municipality of [REDACTED] Dominican Republic. In his undated affidavit, the applicant's father states that he always believed that he had legal and physical custody of the applicant since the time of his divorce from the applicant's mother. The applicant also indicated on the Form I-290B that he was "now awaiting for the document that would proof [sic] residence with his father," however, as of this date, the AAO has received no additional evidence.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states, in pertinent part:

Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

In the present case, the AAO issued its last decision on September 19, 2005. The applicant filed the current motion to reopen on May 10, 2010, more than four years later. Therefore, the motion was not timely filed. The AAO will not exercise its discretion to excuse the late filing of the motion because the applicant has presented no testimonial evidence to explain the delay in filing or to support a conclusion that such delay was both reasonable and beyond his control. The documents that the applicant submits to support his motion consist of an undated affidavit from his father as well as a sworn statement from his father that was taken before a court in the Dominican Republic.

These documents attest to no new facts and the applicant has not demonstrated that they were previously unavailable at the time the AAO issued its last decision. In accordance with 8 C.F.R. § 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed. As the applicant has failed to establish that the late filing of his motion was both reasonable and beyond his control, the AAO shall not disturb its prior decisions.

Pursuant to 8 C.F.R. § 341.2(c), the burden of proof shall be on the claimant to establish citizenship by a preponderance of the evidence. *See also* Section 341 of the Act, 8 U.S.C. § 1452. The applicant failed to establish that he derived citizenship through his father under former section 321 of the Act.

ORDER: The motion is dismissed. The previous decisions of the District Director and the AAO are affirmed.