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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



E₂

FILE:



Office: CLEVELAND, OH

Date: FEB 02 2011

IN RE:

Applicant:



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for Certificate of Citizenship under Former Section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432 (repealed).

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 \$630. 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 motion to reopen and reconsider was denied by the Field Office Director, Cleveland, Ohio, and the matter 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 her decision on September 9, 2010. It is noted that the field office director properly gave notice to the applicant that he had 33 days to file the appeal and indicated that any appeal had to be filed “with the office where the unfavorable decision was made.” *See* Decision of the Field Office Director at 2. The Form I-290B, Notice of Appeal, was erroneously filed with this office and not received by the Cleveland Field Office until October 27, 2010, which was more than 33 days after the decision was issued. Accordingly, the appeal was untimely filed and must be rejected.¹

ORDER: The appeal is rejected.

¹ Neither the Immigration and Nationality Act (the Act) nor the regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. The applicant’s appeal does not meet the requirements of a motion to reopen or reconsider under the regulation at 8 C.F.R. § 103.5(a)(2) and therefore need not be treated as such. *See* 8 C.F.R. § 103.3(a)(2)(v)(B)(2). The applicant is statutorily ineligible for U.S. citizenship. He did not derive U.S. citizenship because former section 321 of the Act, 8 U.S.C. § 1432 (repealed), does not provide for derivation of U.S. citizenship through the father in the case of a child born out of wedlock. The applicant also did not acquire U.S. citizenship at birth under section 309 of the Act, 8 U.S.C. § 1409, because his father was not a U.S. citizen at the time of the applicant’s birth.