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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

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FILE: [REDACTED] Office: ORLANDO, FL Date: JAN 24 2011

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401.

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,

Jerry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Orlando, Florida, and is now before the Administrative Appeals Office (AAO) on appeal.¹ The appeal will be rejected as untimely filed and the matter returned to the director for adjudication as a motion.

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 April 30, 2010. It is noted that the field office director properly gave notice to the applicant that she had 33 days to file the appeal. *See* Decision of the Field Office Director. The applicant's Form I-290B, Notice of Appeal, was received by the appropriate office on June 17, 2010, which was more than 33 days after the decision was issued.² Accordingly, the appeal was untimely filed and must be rejected.

Neither the Act nor the 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. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the field office director. *See* 8 C.F.R. § 103.5(a)(1)(ii).

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). Here, the untimely appeal meets the requirements of a motion to reopen. The appeal is accompanied by additional evidence of the applicant's mother's physical presence in the United States. Therefore, the matter will be returned to the director for adjudication as a motion to reopen.

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

¹ The AAO notes that the Orlando Field Office Director issued a Notice of Certification on November 29, 2010. The issuance of a Notice of Certification is not required to forward an appeal to the AAO. *See* 8 C.F.R. § 103.3(a)(2)(iv). The regulations governing certifications are found at 8 C.F.R. § 103.4.

² The AAO notes that the applicant initially submitted the Form I-290B, Notice of Appeal, to the USCIS Lock Box in Chicago, but that her filing was rejected and returned on June 4, 2010.