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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

Date: **JUN 20 2011**

Office: [REDACTED]

File: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Former Section 309 of the Immigration and Nationality Act; 8 U.S.C. § 309.

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 application was denied by the Field Office Director, Harlingen, Texas, 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 his decision on September 8, 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 may not be filed directly with the AAO and had to be filed with the Harlingen Field Office, the office where the unfavorable decision was made. See Decision of the Field Office Director. The Form I-290B, Notice of Appeal, was not received by the Harlingen Field Office until November 8, 2010, which was more than 33 days after the decision was issued. Accordingly, the appeal was untimely filed and must be rejected.<sup>1</sup>

**ORDER:** The appeal is rejected.

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<sup>1</sup> Neither the Immigration and Nationality 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 record indicates that the applicant's father only resided in the United States for, at most, four years prior to the applicant's birth. The applicant therefore could not establish eligibility for U.S. citizenship under sections 301 and 309(b) of the Immigration and Nationality Act or any other provision of law.