

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

E₂



FILE:



Office: NEWARK, NJ

Date:

MAR 07 2011

IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship under Section 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433.

ON BEHALF OF APPLICANT:



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, Newark, New Jersey, 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 November 8, 2010. It is noted that the field office director properly gave notice to the applicant that she had 33 days to file the appeal and indicated that any appeal had to be filed with “this office,” 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 initially filed with the California Service Center and not received by the Newark Field Office until December 22, 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 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 residing in the United States with her adoptive parents and therefore cannot derive U.S. citizenship under section 322(a)(4) of the Act, 8 U.S.C. § 1433(a)(4). Further, she was adopted after reaching the age of 16 as required by section 101(b)(1) and 322(c) of the Act, 8 U.S.C. §§ 1101(b)(1) and 1433(c). Further, the applicant has not been admitted to the United States as a lawful permanent resident and is therefore ineligible to acquire U.S. citizenship under section 320 of the Act, 8 U.S.C. § 1431.