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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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Date: **MAY 03 2011** Office: COLUMBUS, OH

FILE:

IN RE:

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431

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 Field Office Director, Columbus, Ohio denied the Application for Certificate of Citizenship (Form N-600). 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 of 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 May 25, 2010. It is noted that the field office director properly gave notice to the applicant that she had 30 days to file the appeal (33 days if mailed). The AAO notes that the applicant originally submitted the appeal on July 1, 2010, but that it was rejected based on a determination that the applicant had failed to submit the filing fee.¹ On July 1, 2010, the field office returned the appeal to the applicant and informed her that she had filed an incomplete appeal due to failure to submit the filing fee. U.S. Citizenship and Immigration Services (USCIS) received the appeal on July 12, 2010, or 48 days after the decision was issued. Accordingly, the appeal was untimely filed.

Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO or the field office director authority to extend the 33-day time limit for filing an appeal. As the appeal was untimely filed, the appeal must be rejected. Nevertheless, 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.

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). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). Here, the untimely appeal does not meet the requirements of a motion to reopen or a motion to reconsider because the applicant fails to set forth any new facts or establish that the field office director's decision was based on an incorrect application of law or policy. The applicant's father merely states that he has returned from abroad and requests assistance on how to proceed in the case. Therefore, there is no requirement to treat the appeal as a motion under 8 C.F.R. § 103.3(a)(2)(v)(B)(2).²

As the appeal was untimely filed and does not qualify as a motion, the appeal must be rejected.

ORDER: The appeal is rejected.

¹ The AAO notes that, even if the applicant had submitted a filing fee, the filing would have been untimely.

² We note that even if the appeal had been timely filed, it would have been summarily dismissed pursuant to 8 C.F.R. § 103.3(a)(1)(v).