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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

## PUBLIC COPY



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Date: NOV 22 2011 Office: SAN DIEGO, CA

File:

IN RE:

APPLICATION: Application for Certificate of Citizenship under section 301(g) of the Immigration and Nationality Act, 8 U.S.C. § 1401(g)

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 for Certificate of Citizenship (Form N-600) was denied by the District Director, San Diego, California, 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 appeal on a Notice of Appeal or Motion (Form I-290B) with the appropriate filing fee, which may be accompanied by a brief and/or additional evidence. 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 reflects that, on August 19, 2010, the district director found that the applicant failed to establish the physical presence requirements under section 301(g) of the Act. The district director denied the Form N-600 accordingly. *Decision of the Director*, dated August 19, 2010.<sup>1</sup> It is noted that the district director properly gave notice to the applicant that he had 30 days to file the appeal (33 days if mailed). The applicant incorrectly filed the appeal with the AAO on September 16, 2010. An appeal is not properly filed until the field office receives it. The AAO returned the appeal to the applicant and informed him that he had incorrectly filed the appeal with this office. U.S. Citizenship and Immigration Services (USCIS) received the complete appeal, on September 28, 2010, or 40 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 district 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. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the district director, San Diego, California. *See* 8 C.F.R. § 103.5(a)(1)(ii).

The matter will therefore be returned to the district director. If the district director determines that the late appeal meets the requirements of a motion, the motion shall be granted and a new decision will be issued.

As the appeal was untimely filed, the appeal must be rejected.

**ORDER:** The appeal is rejected.

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<sup>1</sup> The district director subsequently committed a procedural error by issuing a Form I-290C, Notice of Certification on August 19, 2011. No such notice is required unless the district director is certifying the decision for the AAO's review pursuant to 8 C.F.R. § 103.4(a)(2). We, therefore, withdraw the district director's certification notice.