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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: **OCT 04 2011**

Office: SAN FRANCISCO, CA

File: 

IN RE: 

APPLICATION: Application for Certificate of Citizenship under former section 301 of the Immigration and Nationality Act, 8 U.S.C. § 1401 (1958)

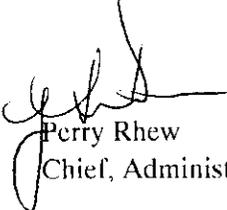
ON BEHALF OF APPLICANT: Self-represented

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 the \$630 fee. 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 Field Office Director, San Francisco, California, and the Administrative Appeals Office (AAO) rejected a subsequent appeal for being untimely filed. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed. The application will remain denied.

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 July 12, 2010, the director denied the Form N-600. It is noted that the director properly gave notice to the applicant that she had 30 days to file the appeal (33 days if mailed). U.S. Citizenship and Immigration Services (USCIS) received the complete appeal, on September 17, 2010, or 67 days after the decision was issued. Accordingly, the appeal was untimely filed and the AAO rejected the appeal.¹

8 C.F.R. § 103.5(a) provides, in pertinent part:

(3) Requirements for motion to reconsider.

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.

In support of her motion to reconsider, the applicant states that the AAO erroneously used the date of September 17, 2010 instead of August 12, 2010 as the date of receipt of the appeal. The record reflects that the applicant incorrectly filed the appeal with the AAO on August 12, 2010. An appeal is not properly filed until the field office receives it. The AAO returned the appeal to the applicant and informed her that she had incorrectly filed the appeal with this office. While the applicant argues that the director instructed her to forward her appeal to the AAO, the decision letter clearly states that the appeal should be filed with the field office. Moreover, the instructions to the Form I-290B clearly state that an appeal should be filed with the office which made the original decision, in this

¹ Moreover, the record reflects that the director denied the petition due to abandonment. *See Director's Decision*, dated July 12, 2010. The regulation at 8 C.F.R. § 103.2(b)(13)(i) provides that if all requested initial evidence is not submitted by the required date, the petition shall be considered abandoned and, accordingly, shall be denied. The regulation at 8 C.F.R. § 103.2(b)(15) provides that a denial due to abandonment may not be appealed, but a petitioner may file a motion to reopen under 8 C.F.R. § 103.5. Accordingly, even if the appeal had been timely the AAO would still have rejected the applicant's appeal because a denial due to abandonment may not be appealed to the AAO.

case, the San Francisco, California, Field Office. Accordingly, the AAO finds that the applicant failed to state reasons for reconsideration that were supported by any pertinent precedent decisions establishing that the AAO's decision was based on an incorrect application of law.

The petitioner's motion does not meet applicable requirements. The regulation at 8 C.F.R. § 103.3(a)(3) states that 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. Accordingly, the motion must be dismissed for failing to meet applicable requirements.

ORDER: The motion is dismissed. The order dismissing the appeal, dated July 20, 2011, is affirmed. The application remains denied.