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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 06 2011

Office: PHILADELPHIA, PA

File:



IN RE:



APPLICATION:

Application for Certificate of Citizenship under former section 321 of the Immigration and Nationality Act, 8 U.S.C. § 1432 (1982)

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, Philadelphia, Pennsylvania, 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.¹ 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 August 27, 2010, the director denied the Form N-600. It is noted that the director properly gave notice to the applicant that he had 30 days to file the appeal (33 days if mailed). U.S. Citizenship and Immigration Services (USCIS) received the complete appeal, on or after March 1, 2011, or more than 186 days after the decision was issued. Accordingly, the appeal was untimely filed and the AAO rejected the appeal on April 7, 2011. It is noted that the AAO properly gave notice to the applicant that he had 30 days (33 days if mailed) to file a Form I-290B, Notice of Motion, with the Philadelphia, Pennsylvania Field Office. On April 28, 2011, the AAO received a letter from the applicant, requesting that the AAO reopen its prior decision *sua sponte*. On May 10, 2011, the AAO notified the applicant that it would not reopen its prior decision. The applicant filed the Form I-290B that is the subject of this decision on May 23, 2011.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) states that to properly file a motion, the affected party must file it within 30 days (33 days if mailed) of the decision that motion seeks to reopen or reconsider. The AAO issued its prior decision on April 7, 2011 and this motion was filed on May 23, 2011, or 46 days later. Thus, the motion was not properly filed.

The regulation at 8 C.F.R. § 103.5(a)(4) states that a motion which does not meet applicable requirements shall be dismissed. Applicable requirements include, but are not limited to, the timely filing of the motion as outlined at 8 C.F.R. § 103.5(a)(1)(i). As the motion was not timely filed, it will be dismissed pursuant to 8 C.F.R. § 103.5(a)(4) for failing to meet applicable requirements.

ORDER: The motion is dismissed. The order dismissing the appeal, dated April 7, 2011, is affirmed. The application remains denied.

¹ The applicant indicates on the Form I-290B that he is filing an appeal; however, as we previously issued a decision in this matter, the applicant can only file a motion to reopen or reconsider. 8 C.F.R. § 103.5. Despite the applicant's error, we will treat the Form I-2990B as a motion to reconsider.