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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

[REDACTED]

Date: **JUN 18 2012** Office: NEBRASKA SERVICE CENTER [REDACTED]

IN RE: [REDACTED]

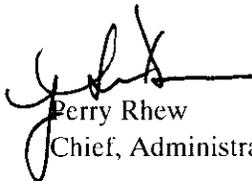
APPLICATION: Application for Replacement Naturalization Document under Section 338 of the
Immigration and Nationality Act, 8 U.S.C. § 1449

ON BEHALF OF APPLICANT: [REDACTED]

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.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Application for Replacement Naturalization/Citizenship Document (Form N-565) was denied by the Director, Nebraska Service Center, 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. § 103.8(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 January 5, 2012, the director found that the requested change in date of birth and name was not warranted and denied the Form N-565 accordingly. *Decision of the Director.* The director properly gave notice to the applicant that he had 30 days to file the appeal (33 days if mailed), that any appeal must not be directly filed with the AAO and directed the applicant to the online instructions and customer service number for further instructions. The applicant incorrectly submitted the appeal directly to the AAO on February 9, 2012. The AAO returned the appeal to the applicant and informed him that he had incorrectly submitted the appeal with this office and that the appeal must be submitted to the office which made the unfavorable decision, in this case, the Nebraska Service Center. The applicant's appeal was not received by the Nebraska Service Center until February 28, 2012, or 54 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 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 director, Nebraska Service Center. *See* 8 C.F.R. § 103.5(a)(1)(ii).

The matter will therefore be returned to the director. If the 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.