

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

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: **SEP 12 2012**

Office: MIAMI, FL

FILE: 

IN RE: Applicant: 

Application: Application for Certificate of Citizenship under section 321 of the Immigration and Nationality Act; 8 U.S.C. § 1432.

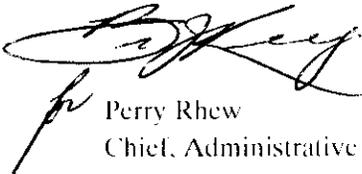
ON BEHALF OF APPLICANT:



**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.

Thank you.



Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Application for Certificate of Citizenship under Section 321 (Form N-600) was denied by the Field Office Director, Miami, Florida, 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 April 6, 2011, the field office director found that the applicant failed to establish his eligibility for a certificate of citizenship because he failed to establish that he had resided in the United States in the legal and physical custody of his U.S. citizen parent. The field office director denied the Form N-600 accordingly. *Decision of the Director*, dated April 6, 2011.

It is noted that the field office director properly gave notice to the applicant that he had 30 days to file the appeal (33 days if mailed). The denial notice instructed the applicant that a notice of appeal should be sent by mail to the Miami Field Office. However, the applicant mailed the Form I-290B appeal to the AAO, which the AAO received on May 4, 2011. The AAO returned the Form I-290B appeal to the applicant on May 5, 2011, with instructions to file the appeal with the Miami Field Office. On May 11, 2011 counsel mailed the appeal to the Miami Field Office. U.S. Citizenship and Immigration Services (USCIS) received the Form I-290B on May 11, 2011, or 35 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. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Miami field office director, Miami, Florida. *See* 8 C.F.R. § 103.5(a)(1)(ii).

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