



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: **JAN 17 2013**

Office: HONOLULU, HI

FILE: [Redacted]

IN RE:

Applicant: [Redacted]

APPLICATION:

Application for a Certificate of Citizenship under former Section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7) (1976).

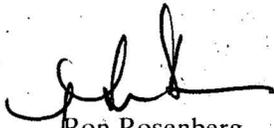
ON BEHALF OF APPLICANT:

[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,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Honolulu, Hawaii (the director), 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 complete appeal within 30 days after 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). Neither the Act nor the pertinent regulations grant the AAO authority to extend this time limit.

The record indicates that the director issued his decision on June 14, 2010. It is noted that the director properly gave notice to the applicant that he had 33 days to file the appeal. The director specified that the appeal had to be submitted to the Honolulu Field Office, and not the AAO or the Board of Immigration Appeals.

On July 13, 2010, the applicant, through counsel, erroneously filed a Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals, with the corresponding \$110 fee. The applicant did not file the required Form I-290B, Notice of Appeal, with the corresponding \$630 fee, until October 16, 2012, two years and three months after the issuance of the director's decision in his case. Accordingly, the appeal was untimely filed.

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. *See* 8 C.F.R. § 103.5(a)(1)(ii). The director determined that the late appeal did not meet the requirements of a motion and forwarded the matter to the AAO.

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

ORDER: The appeal is rejected.