



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **OCT 15 2013**

OFFICE: EL PASO, TX

FILE: [Redacted]

IN RE: [Redacted]

APPLICATION: Application for Certificate of Citizenship under former Sections 301 and 309 of the Immigration and Nationality Act; 8 U.S.C. §§ 1401 and 1409

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. 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  
Chief, Administrative Appeals Office

**DISCUSSION:** The Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director, El Paso, Texas, and an appeal was summarily dismissed by the Administrative Appeals Office (AAO). The applicant filed a second Form N-600 which the director dismissed, and the matter is again before the AAO on appeal. The director's decision, dated May 1, 2013, is withdrawn due to lack of jurisdiction. The AAO enters its own decision rejecting the motion as untimely. The underlying application remains denied.

The applicant initially filed a Form N-600 on July 1, 2011. The application was denied by the director on December 28, 2011, on the basis that the applicant had failed to establish that he was legitimated by his U.S. citizen father, as required under sections 309 and 301 of the former Immigration and Nationality Act (the former Act), 8 U.S.C. §§ 1409 and 1401. Through counsel, the applicant appealed the director's decision to the AAO on January 30, 2012. The appeal was summarily dismissed by the AAO on April 25, 2012, because the applicant failed to identify an erroneous conclusion of law or statement of fact for the appeal. The AAO decision advised the applicant and counsel that, under 8 C.F.R. § 103.5(a), the applicant could file a motion to reconsider or to reopen within 33 days of the AAO decision date. Counsel for the applicant instead filed a second Form N-600 with the El Paso, Texas field office on January 2, 2013.

The regulation at 8 C.F.R. § 341.5(e) states that after an application for a certificate of citizenship has been denied and the appeal time has run, a second application submitted by the same individual shall be rejected and the applicant shall be instructed to file a motion to reopen or reconsider the denial of the first application. The official having jurisdiction over a motion to reopen or reconsider, is the official who made the latest decision in the proceeding. *See* 8 C.F.R. § 103.5(a)(1)(ii).

In the present matter, the AAO issued the latest decision in the applicant's case on April 25, 2012. The AAO therefore has jurisdiction if the applicant files a motion to reopen or reconsider. The applicant did not file a motion to reopen or reconsider with the AAO. It appears, however, that the director treated the applicant's second Form N-600 as a motion to reopen the director's decision, dated December 28, 2011, and the director re-denied the matter in a decision dated, May 1, 2013. On May 29, 2013, counsel for the applicant filed an appeal of the decision with the AAO. The director, however, lacked jurisdiction to issue the May 1, 2013 decision. Accordingly, the director's May 1, 2013 decision is invalid and must be withdrawn.

Although the applicant did not file a motion to reopen or reconsider with the AAO, given the procedural errors made in the present case, we will treat the matter as a motion to reopen our April 25, 2012, AAO dismissal for purposes of this decision. The regulations provide at 8 C.F.R. § 103.5(a)(1)(i), that in order to properly file a motion to reopen or reconsider, the affected party must file the motion within 30 days after service of the unfavorable decision. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is the date of actual receipt of the motion, not the date of mailing. *See* 8 C.F.R. § 103.2(a)(7)(i). Under 8 C.F.R. § 103.5(a)(1)(i), the untimely filing of a motion to reopen or reconsider may be excused in the discretion of the Service, where it is demonstrated that the delay was reasonable and was beyond the control of the applicant.

Here, the record reflects that counsel submitted a second Form N-600 on January 2, 2013, two hundred and fifty two days after the AAO decision was issued. A second Form I-290B was filed on May 29, 2013, three hundred and ninety nine days after issuance of the AAO decision. The motion is therefore untimely filed.

Counsel asserts, in the May 2013 Form I-290B, that on June 26, 2012, a court determined the applicant's U.S. citizen father's paternity over the applicant, and that a new birth certificate was issued to the applicant reflecting his father's paternity. Counsel submits copies of the court decision and birth certificate, and concludes that the evidence establishes that the applicant was legitimated by his father for section 309 and 301 of the former Act purposes. Counsel does not address the applicant's failure to timely file a motion to reopen or reconsider with the AAO, and counsel does not address or explain how the applicant's failure to timely file the motion was reasonable or beyond the applicant's control. The record also lacks evidence establishing that the applicant's delay in filing a motion to reopen was reasonable and beyond the control of the applicant. The applicant therefore failed to establish that the delay in filing his motion to reopen was reasonable or beyond his control.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the time limit for filing a motion, unless it is demonstrated that the delay was reasonable and was beyond the control of the applicant. Here, the applicant failed to establish that the delay in filing his motion to reopen was reasonable or beyond his control. The motion is therefore rejected as untimely.

**ORDER:** The director's decision, dated May 1, 2013, is withdrawn. The motion to reopen is rejected as untimely filed. The underlying application remains denied.