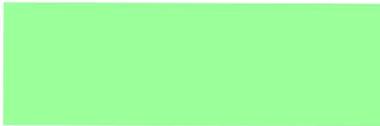




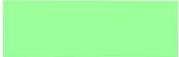
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: OCT 31 2013

OFFICE: SANTA ANA, CA

FILE: 

IN RE: 

APPLICATION: Application for Certificate of Citizenship under former Section 322 of the Immigration and Nationality Act; 8 U.S.C. § 1433

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) 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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the District Director, Santa Ana, California, and the Administrative Appeals Office (AAO) dismissed the appeal. A second Form N-600 was rejected by the Field Office Director, Santa Ana, California (the director). The matter is now before the AAO on a motion to reconsider. The motion will be dismissed. The underlying application will remain denied.

The director determined, in a decision dated February 17, 2005, that the applicant did not derive U.S. citizenship through his father because he did not meet section 322 of the former Act, 8 U.S.C. § 1432, age requirements at the time of application and admission to citizenship. The applicant's Form N-600 was denied accordingly.¹ The AAO agreed, and dismissed the matter on appeal on July 17, 2006. The applicant filed a new Form N-600, which the director properly rejected on August 7, 2013, due to lack of jurisdiction. The matter is now before the AAO on a motion to reconsider.

Counsel for the applicant asserts, on motion, that the applicant complied with section 322(a) of the former Act requirements prior to his 18th birthday, and that section 322(b) of the former Act, oath of allegiance requirements, may be complied with at any age. On this basis, counsel contends that the AAO determination that the applicant must meet section 322(b) of the former Act requirements prior to turning 18, was erroneous. Counsel submits no new evidence on appeal, and counsel refers to no legal decisions or Service policy to support these assertions. The entire record was reviewed and considered in rendering a decision on the motion.

The regulation provides, 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. § 103.8 (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 the AAO decision in the applicant's case was issued on July 17, 2006. The applicant's motion to reconsider was filed on September 6, 2013, over seven years after issuance of the AAO decision. The motion was therefore untimely filed.

The applicant has not asserted or established that the failure to timely file his motion to reconsider was reasonable or beyond his control; moreover, the record contains no information or evidence to establish such facts. 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 has failed to establish that the over seven year delay in filing his motion to reconsider was reasonable or beyond his control. The motion is therefore dismissed.

¹ The applicant also filed a Form N-600 on August 6, 1986; however, the record reflects that the application was dismissed as abandoned, due to the applicant's failure to submit required documentation. Under 8 C.F.R. § 103.2(b)(15), a denial due to abandonment may not be appealed; however, an applicant may file a timely motion to reopen under 8 C.F.R. § 103.5 of the Act, or file a new application or petition with a new fee. Here, the record reflects that the applicant filed a new Form N-600 on June 7, 2004.

Furthermore, even if the applicant had met the requirements of a timely filed motion to reconsider, which he has not, he would nevertheless have failed to establish that he derived U.S. citizenship through his father, pursuant to section 322 of the former Act.

Section 322 of the former Act stated, in pertinent part:

(a) Application of citizen parents; requirements

A parent who is a citizen of the United States may apply to [Secretary] for a certificate of citizenship on behalf of a child born outside the United States. The [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General [Secretary] that the following conditions have been fulfilled:

- 1) At least one parent is a citizen of the United States, whether by birth or naturalization.
- 2) The child is physically present in the United States pursuant to a lawful admission.
- 3) The child is under the age of 18 years and in the legal custody of the citizen parent.

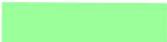
....

(b) Attainment of citizenship status; receipt of certificate

Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service [CIS] within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the [Secretary] with a certificate of citizenship.

The statutory language contained in section 322(b) of the former Act reflects that the citizenship application must be approved prior to the applicant's 18th birthday, and that the applicant must take an oath of allegiance prior to his or her 18th birthday. Furthermore, the Board of Immigration Appeals addressed section 322 of the former Act age requirements in *Matter of Rodriguez-Tejedor*, 23 I&N Dec. 153, 155 (BIA 2001), stating in pertinent part that:

[S]ection 322(a), as it was in effect at the time the respondent filed his Application for Certificate of Citizenship, clearly stated that an individual must be under 18 years of age at the time the application for such certificate is filed by the citizen parent of the individual. Similarly, the regulation set forth at 8 C.F.R. § 322.2(a) (1997) clearly states that "a child on whose behalf an application for naturalization has been filed ... must: (1) Be unmarried and under 18 years of age, both at the time of application and at the time of admission to citizenship"



Where an applicant has failed to establish statutory eligibility for U.S. citizenship, a certificate of citizenship cannot be issued. *See Fedorenko v. U.S.*, 449 U.S. 490, 506 (1981) (stating that strict compliance with statutory prerequisites is required to acquire citizenship.) Here, the record fails to establish that the applicant's Form N-600 was approved prior to the applicant's 18th birthday, or that the applicant took an oath of allegiance prior to turning 18, as required under section 322(b) of the former Act. The applicant therefore failed to establish statutory eligibility for U.S. citizenship under section 322 of the former Act.

ORDER: The motion to reconsider is dismissed. The underlying application remains denied.