U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

Date: AUG 18 2014 Office: DALLAS, TX FILE:

IN RE: Applicant:

APPLICATION: Application for Certificate of Citizenship under Former Section 301 of the Immigration and Nationality Act, 8 U.S.C. § 1401 (1972).

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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the Dallas, Texas Field Office (the director) denied the Application for Certificate of Citizenship (Form N-600) and the matter came before the Administrative Appeals Office (AAO) on appeal. The AAO dismissed the appeal and the applicant has filed an untimely motion to reopen the AAO's decision. The motion will be dismissed.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that a motion to reopen must be filed by the affected party within 30 days of the adverse decision. If the decision was mailed, the motion must be filed within 33 days. 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). Failure to file a timely motion to reopen "may be excused . . . where it is demonstrated that the delay was reasonable and was beyond the control of the applicant . . . ." *See* 8 C.F.R. § 103.5(a)(1)(i). An untimely filed motion is dismissed for failure to meet applicable requirements. 8 C.F.R. § 103.5(a)(4).

We issued our decision in this case on January 5, 2011, at which time we properly gave notice to the applicant and his counsel that he had 30 days to file a motion. The instant motion was filed on November 5, 2013, almost three years after issuance of our decision dismissing the appeal. Accordingly, the motion was untimely filed.

As noted above, a filing delay for a motion to reopen may be excused at our discretion if the applicant demonstrates that the delay was reasonable and beyond his control. Here, counsel asserts that the applicant was incarcerated and not aware of the 30-day filing requirement and that the applicant's prior counsel did not file a motion. Neither counsel nor the applicant provides the dates of the applicant's incarceration or otherwise provide probative details of the nearly three-year filing delay. Accordingly, the reopening of our prior decision is not warranted, as a matter of discretion, and the motion will be dismissed for failing to meet applicable requirements.[1]

ORDER: The motion to reopen is dismissed. Our prior decision dismissing the appeal, dated January 5, 2011, is affirmed. The Form N-600 remains denied.

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[1] Although we will not discuss the merits of the Form N-600, we note that the motion is accompanied by affidavits further contradicting previous statements in the record.