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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

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DATE **MAY 10 2011** Office: TEXAS SERVICE CENTER FILE:

IN RE: Applicant:

APPLICATION: Application for a Replacement Citizenship Document (Form N-565)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Texas Service Center. 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. § 103.5a(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 indicates that the director issued his decision on November 24, 2010. It is noted that the field office director properly gave notice to the applicant that she had 33 days to file the appeal and indicated that any appeal had to be filed “with this office” and “may not be filed directly with the Administrative Appeals Office.” *See* Decision of the Director. The Form I-290B, Notice of Appeal, was erroneously initially filed with the AAO and not received by the Texas Service Center until December 29, 2010, which was more than 33 days after the decision was issued. Accordingly, the appeal was untimely filed and must be rejected.¹

ORDER: The appeal is rejected.

¹ Neither the Immigration and Nationality Act nor the regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. The applicant’s appeal does not meet the requirements of a motion to reopen or reconsider under the regulations at 8 C.F.R. § 103.5(a)(2), (3) and therefore need not be treated as such. *See* 8 C.F.R. § 103.3(a)(2)(v)(B)(2). The AAO notes that Section 338 of the Act, 8 U.S.C. § 1449, and the regulations promulgated thereunder, at 8 C.F.R. § 338.5, permit the correction of a certificate of naturalization in limited circumstances not applicable here. Specifically, the regulations do not allow for the correction of a date of birth in a certificate of naturalization where, as here, the date on the certificate conforms to the information provided in the Form N-400, Application for Naturalization.