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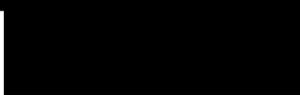
U.S. Citizenship
and Immigration
Services

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FILE:



Office: PHILADELPHIA, PA Date: NOV 30 2007
(PITTSBURG, PA SUB-OFFICE)

IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Philadelphia, Pennsylvania (Pittsburgh, Pennsylvania sub-office.) The matter is now before the AAO on appeal. The appeal will be rejected as untimely filed. The matter will be returned to the district director for consideration as a motion to reopen/reconsider, and for issuance of a new decision.

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 of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. 8 C.F.R. § 103.2(a)(7)(i).

The district director issued the applicant's denial decision on June 25, 2002. Certified mail receipt evidence contained in the record reflects that the decision was received at the applicant's address of record on June 28, 2002. The district director properly gave notice to the applicant that he had 30 (33) days to file an appeal. The applicant's appeal was received on January 30, 2003 – 219 days after the district director's decision was issued. The applicant indicates on appeal that he did not receive his denial decision until January 3, 2003. The applicant provides no evidence or explanation of this fact, however, and the AAO finds that the certified mail receipt evidence contained in the record clearly demonstrates that the denial decision was received at the applicant's address of record on June 28, 2002. Accordingly, the appeal will be deemed to be untimely filed.

Neither the Immigration and Nationality Act nor the pertinent regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. 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.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

In the present matter, the applicant's Form N-600, Application for Certificate of Citizenship was denied because the applicant failed to satisfy U.S. citizenship requirements set forth in section 322 of the Immigration and Nationality Act, as it existed prior to amendments made effective on February 27, 2001 (the former Act.) The applicant indicates that the district director erroneously applied section 322 of the former Act provisions to his case, and he asserts that he instead qualifies for U.S. citizenship through his father, pursuant to provisions contained in section 320 of the Act, as amended. The applicant cites to language contained in section 320 of the Act, as amended, and he submits birth certificate and high school attendance evidence, as well as a copy of his father's certificate of citizenship, to prove the assertion that he qualifies for U.S. citizenship under section 320 of the Act, as amended.

The AAO finds that the untimely appeal meets requirements for consideration as a motion to reopen and a motion to reconsider. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the officer in charge. 8 C.F.R. § 103.5(a)(1)(ii). The district director must

therefore consider the untimely appeal as a motion to reopen/reconsider and render a new decision accordingly.

ORDER: The appeal is rejected. The matter is returned to the district director for consideration as a motion to reopen/reconsider and issuance of a new decision.