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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**

ES

Date: **APR 25 2012**

Office: NEW YORK, NY

File: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Cancellation of Certificate of Citizenship under Section 342 of the Immigration and Nationality Act; 8 U.S.C. § 1453

ON BEHALF OF APPLICANT:  
[REDACTED]

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.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The District Director, New York, New York cancelled the applicant's Certificate of Citizenship. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and motion to reconsider. The motion to reopen and the motion to reconsider will be dismissed.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the motion within 30 days of 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 failure to file a motion to reopen before this period expires may be excused at the discretion of the AAO where it is demonstrated that the delay was reasonable and beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i). A motion that does not meet the applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The record indicates that the AAO issued its decision on January 6, 2011. On February 17, 2011, or 42 days after the decision was issued, U.S. Citizenship and Immigration Services (USCIS) received the motion. Accordingly, the motion was untimely filed.

On motion, counsel contends that the delay in filing the instant motion should be tolled due to ineffective assistance of former counsel. Counsel submits a copy of a complaint filed with the New York Departmental Disciplinary Committee for the First Judicial District concerning the applicant's grievance complaint against former counsel and a letter from the applicant in regard to the actions of former counsel about which the applicant filed the complaint. Documentation submitted by counsel fails to meet the requirements of *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). Additionally, the complaint filed against former counsel is in reference to actions by former counsel before the United States District Court for the Southern District of New York and does not pertain to actions in regard to the matter before the AAO. Furthermore, the complaint was filed within the time frame permitted for filing of the motion in the instant case and would not serve as a reason for delay in filing the motion.

As a matter of discretion, the petitioner's failure to file the motion to reopen within the period allowed will not be excused as either reasonable or beyond the control of the petitioner. The motion to reconsider was untimely filed. Accordingly, both motions will be dismissed pursuant to 8 C.F.R. § 103.5(a)(4), for failing to meet applicable requirements.

**ORDER:** The motion is dismissed.