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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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EA

NOV 23 2004

FILE: 

Office: PHOENIX, AZ

Date:

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship under Section 320 of the Immigration and Nationality Act, 8 U.S.C. § 1431.

ON BEHALF OF APPLICANT:



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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Interim District Director, Phoenix, Arizona. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record reflects that the applicant was born on May 24, 1981, in Mexico. The applicant's father [REDACTED] was born in Mexico, and he became a naturalized U.S. citizen on February 28, 1992. The applicant's mother, [REDACTED] was born in Mexico, and she is not a U.S. citizen. The applicant's parents were married in Mexico on February 13, 1987. The record contains no evidence that the applicant was lawfully admitted into the United States. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431.

In a decision dated November 19, 2003, the interim district director concluded that the applicant was ineligible for citizenship under section 320 of the Act, because he was over the age of eighteen on February 27, 2001, when the provision took effect.

Counsel asserts on appeal that the applicant qualifies for citizenship under section 320 of the Act, and that the interim district director erred in not applying the provision retroactively to the applicant's case.

8 C.F.R. § 103.3(a)(2)(v)(B)(2) states in pertinent part, that, "[a]n appeal which is not filed within the time allowed must be rejected as improperly filed."

8 C.F.R. § 103.2(a)(1) provides that every appeal, "[s]hall be executed and filed in accordance with the instructions on the form . . .", and that the appeal, "[m]ust be filed with the appropriate filing fee required by § 103.7."

The interim district director's decision advised the applicant that a notice of appeal must be filed within thirty days of the date of the decision (33 days if the decision was mailed). The interim district director's decision advised further that a fee was required in order to properly file a notice of appeal, and that if no appeal was filed within the time allowed, the interim district director's decision would be final.

The record reflects that the applicant attempted to file a notice of appeal on December 19, 2003. However, the required fee was not paid until January 15, 2004. The applicant's notice of appeal was therefore not properly filed within the 30 (33) days allowed for filing, as set forth in 8 C.F.R. §§ 103.2 and 103.3, and the appeal will be rejected as improperly filed.

ORDER: The appeal is rejected.