U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: SAN ANTONIO, TEXAS Date: JUL 13 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401.

ON BEHALF OF APPLICANT:

[redacted]

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, Director
Administrative Appeals Office

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The waiver application was denied by the District Director, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record reflects that the applicant was born on March 10, 1969, in Mexico. The applicant's father, Antonio Ramirez, was born in Mexico on August 5, 1942, and he became a naturalized United States (U.S.) citizen on February 19, 1990, when the applicant was twenty years old. The applicant's mother, Ofelia Ramirez, was born in Mexico on February 21, 1947, and the record indicates that she obtained derivative U.S. citizenship at the time of her birth. The applicant's parents were married on December 8, 1962, in Mexico. The applicant seeks a certificate of citizenship pursuant to section 301 of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1401, based on the claim that he acquired U.S. citizenship at birth through his mother.

The district director found the applicant had failed to establish that his mother was physically present in the United States or its outlying possessions for a period totaling ten years, at least five years of which occurred after his mother reached the age of fourteen. The application was denied accordingly.

On appeal, counsel asserts that the applicant's mother meets U.S. physical presence requirements for certificate of citizenship purposes, and that the applicant is entitled to derivative citizenship through his mother.

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."

The district director's decision to the applicant and the Form I-290B, Notice of Appeal to the Administrative Appeals Office (Form I-290B) state clearly that the appeal of an unfavorable decision must be made to the AAO within 30 calendar days of the decision (33 days if the decision is mailed). The Form I-290B filed by counsel instructs further that, "if an applicant needs more than 30 days to file an appeal, the applicant must explain why in a separate letter attached to the Form I-290B. The AAO will grant more time only for good cause."

The record reflects that the director/district director's decision denying the application is dated March 29, 2002. The applicant's appeal was not filed until May 16, 2002, well after the 30 (33) days allowed for filing, and the appeal contained no letter or information explaining the cause for the late filing. Accordingly the appeal will be rejected as improperly filed.

ORDER: The appeal is rejected.