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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: HARLINGEN, TX Date: JAN 2 4 2005

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 301(a)(7) of the former Immigration and Nationality Act, 8 U.S.C. § 1401(a)(7).

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

DISCUSSION: The application was denied by the District Director, Harlingen, Texas. 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 in Mexico on July 25, 1967. The applicant's father, Aldaberto Gonzalez Garza, was born on March 13, 1918, in Mexico, and he acquired U.S. citizenship at birth through a U.S. citizen parent. The applicant's mother was born in Mexico on March 23, 1937, and she is not a U.S. citizen. The applicant's parents were married in October 1952 in Mexico. The applicant seeks a certificate of citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1401(a)(7), based on the claim that he acquired U.S. citizenship at birth through his father.

The district director determined that the applicant had failed to establish his father was physically present in the United States for ten years prior to the applicant's birth, at least five years of which occurred after the applicant's father reached the age of fourteen, as required by section 301 of the former Act. The application was denied accordingly.

On appeal, counsel asserts that the applicant established his father had constructive physical presence in the United States during the requisite time period set forth in the Act, and that the applicant's father therefore satisfies the physical presence requirements set forth in the Act.

8 C.F.R. § 103.3(a)(2) states in pertinent part:

> (i) Filing appeal. The affected party shall file an appeal on Form I-290B. Except as otherwise provided in this chapter, the affected party must pay the fee required by § 103.7 of this part. The affected party shall file the complete appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision.

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."

Moreover, the district director's decision to the applicant states that the appeal of an unfavorable decision must be made to the AAO within 30 calendar days of the decision.

The record reflects that the district director's decision denying the applicant's Form N-600, Application for Certificate of Citizenship is dated April 3, 1997. The applicant's appeal was not filed until May 17, 1997, after the thirty days allowed for filing. Because the appeal was not filed within the time allowed, it must be rejected as improperly filed.

ORDER: The appeal is rejected.