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U.S. Citizenship
and Immigration
Services

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FILE:



Office: HARLINGEN, TEXAS

Date:

AUG 24 2005

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship pursuant to Section 309 of the Immigration and Nationality Act, 8 U.S.C. § 1409, and Section 301(a)(7) of the former Immigration and Nationality Act, 8 U.S.C. § 1401(a)(7).

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, 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 June 27, 1963. The applicant asserts that his father was born in Texas on November 3, 1937, and that he is a U.S. citizen. The applicant's mother is not a U.S. citizen. The record reflects that the applicant's parents did not marry. The applicant seeks a certificate of citizenship pursuant to section 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1409 and 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 derived U.S. citizenship at birth through his father.

The district director concluded that the applicant was ineligible for citizenship under section 309 of the Act, because he failed to establish a blood relationship between himself and a U.S. citizen parent. The district director determined further that the applicant had also failed to establish that he was legitimated by his father, as required by section 309(c) of the Act. The application was denied accordingly.

On appeal, counsel asserts that the evidence establishes the applicant is the biological son of his U.S. citizen father, [REDACTED] and that the applicant is therefore entitled to U.S. citizenship. Counsel concedes that the applicant's father did not legitimate the applicant.

The AAO notes that the district director's decision erroneously states that an appeal of the decision must be made to the AAO within 15 calendar days from the date of the decision. Pursuant to provisions contained in 8 C.F.R. § 103.3(a)(2), the applicant is entitled to file an appeal within 30 days (33 days if the decision is mailed), rather than within 15 days.

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) provides 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 denying the applicant's Form N-600, Application for Certificate of Citizenship is dated April 7, 1999. The record reflects, however, that the applicant's Form I-290, Notice of Appeal was filed on July 21, 1999, well after the 30 (33) days allowed for filing. The appeal must therefore be rejected as improperly filed.

ORDER: The appeal is rejected.