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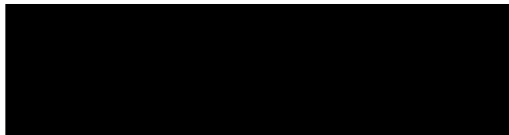
**PUBLIC COPY**

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

E2



FILE: [REDACTED] Office: HARLINGEN, TEXAS

Date:

**AUG 05 2010**

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Former Section 301(a)(7) of the  
Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7) (1961).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 application was denied by the Harlingen Field Office Director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed. The matter will be returned to the field office for adjudication as a motion to reopen.

The applicant seeks a certificate of citizenship under section 301(a)(7) of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7), as in effect at the time of the applicant's birth in 1961.

The applicant claims he acquired citizenship through his mother. The director determined that the applicant failed to establish that his mother was physically present in the United States for the requisite periods before his birth.

An appeal must be filed 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)(i). If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

In this case, the director denied the application on March 24, 2010. The director properly notified the applicant that if he chose to appeal the decision, he would have to file his appeal with the Harlingen Field Office within 33 days. The field office did not receive the applicant's appeal until April 28, 2010, which was 35 days after the director's decision was issued. Consequently, the appeal must be rejected as untimely filed.

Neither the Act nor the pertinent regulations grant the AAO authority to extend the time limit for filing an appeal. However, the regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) directs that if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the Harlingen Field Office director. *See* 8 C.F.R. § 103.5(a)(1)(ii).

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). In this case, the applicant submitted four new affidavits on appeal, which he asserts attest to his mother's physical presence in the United States before his birth. Accordingly, the application will be returned to the director for adjudication as a motion to reopen.

**ORDER:** The appeal is rejected. The matter is returned to the Harlingen Field Office for adjudication as a motion to reopen.