

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

E₂



FILE:



Office: SAN DIEGO, CA

Date: **MAR 31 2011**

IN RE:

Applicant:



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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Diego, California, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected as untimely filed.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i).

The record indicates that the director issued the decision on November 2, 2010, and properly gave notice to the applicant that he had 33 days to file the appeal. The Form I-290B, Notice of Appeal, was received by the San Diego Field Office on December 14, 2010, more than 33 days after the decision was issued. Accordingly, the appeal was untimely filed and must be rejected.¹

ORDER: The appeal is rejected.

¹ Neither the Immigration and Nationality Act nor the regulations grant the AAO authority to extend the 33-day time limit for filing an appeal. The application was denied for failure to submit evidence to demonstrate the applicant's father's physical presence in the United States prior to the applicant's birth. The appeal is not accompanied by any additional evidence and no other evidence has been received by this office since the filing of the appeal. The appeal therefore does not meet the requirements of a motion to reopen or reconsider under the regulations at 8 C.F.R. § 103.5(a)(2) and (3) and therefore need not be treated as such. *See* 8 C.F.R. § 103.3(a)(2)(v)(B)(2).