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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

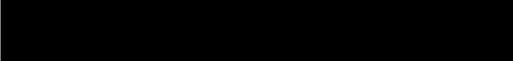
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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



AUG 29 2003

FILE:  Office: SAN ANTONIO, TX Date:

IN RE: Applicant: 

APPLICATION: Application for Certificate of Citizenship under Section 341(a) of the Immigration and Nationality Act, 8 U.S.C. § 1452(a).

ON BEHALF OF APPLICANT:
SELF-REPRESENTED

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office



DISCUSSION: The waiver application was denied by the District Director, San Antonio, Texas. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be dismissed and the prior AAO order dismissing the appeal will be affirmed.

The record reflects that the applicant was born on September 14, 1955, in Mexico. The applicant's father, [REDACTED] was born in the United States (U.S.) in July 1916. The applicant's mother, [REDACTED] was born in October 1922, in Mexico and never had a claim to United States citizenship. The applicant's parents married each other on September 21, 1938. The applicant was lawfully admitted to the U.S. in May 1956. The applicant seeks a certificate of citizenship, which according to his date of birth, falls under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g).

The district director determined that the applicant failed to establish that his U.S. citizen parent had been physically present in the United States or one of its outlying possessions for 10 years at the time of the applicant's birth, at least 5 of which were after age 14, as required under section 301(g) of the Act. The AAO affirmed the decision on appeal.

In the present motion to reconsider, the applicant reasserts his prior claim that section 301(g) citizenship requirements do not pertain to him. The applicant additionally asserts that the burden of proof of establishing his citizenship claim does not rest with him. The applicant also asserts that criminal legal sentencing guidelines are unfair and should not have been applied against him.

The AAO has no jurisdiction to address the applicant's assertions regarding criminal sentencing guidelines. The assertions will thus not be addressed in this decision.

8 C.F.R. § 103.5(a) states in pertinent part:

(a) Motions to reopen or reconsider

. . . .

(2) Requirements for motion to reopen. 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.

. . . .

(3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

(4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed

. . . .

Although it is not entirely clear, the applicant appears to claim in his motion to reconsider, that under the 14th Amendment of the U.S. Constitution ("14th Amendment"), the child of a U.S. citizen father automatically becomes a U.S. citizen. The AAO finds the applicant's assertion to be erroneous and contrary to the law. The applicant does not quote the constitutional language he refers to and he provides no evidence, legal or otherwise, to corroborate his assertion. Indeed, the actual language contained in the 14th Amendment states simply that **all persons born or naturalized in the U.S.** are U.S. citizens. The 14th Amendment makes no other reference to obtaining U.S. citizenship and it does not discuss derivative citizenship rights of children of U.S. citizens. See 14th Amendment of the U.S. Constitution, section 1.

The record reflects that the prior district director and AAO decisions thoroughly and convincingly addressed the applicability of section 301(g) of the Act to the applicant's case, and no legal error in the prior decisions has been identified by the applicant.

The applicant's assertion that he does not have the burden of establishing his citizenship claim also fails. In making this assertion, the applicant refers to the Commerce Clause and to the fact that he is incarcerated. The applicant provides no legal basis or clear argument to demonstrate how this information shifts the applicant's burden of proof in immigration citizenship proceedings. Moreover, as noted in the prior district director and AAO decisions, the regulations set forth in 8 C.F.R. § 341.2(c) state clearly that the burden of proof shall be on the claimant (applicant) to establish citizenship by a preponderance of the evidence. See also 341 of the Act, 8 U.S.C. § 1452.

Because the applicant failed to establish any erroneous



conclusion of law or statement of fact in his motion to reconsider, the motion will be dismissed.

ORDER: The appeal is dismissed and the order of June 17, 2002, dismissing the appeal is affirmed.