U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: SAN ANTONIO, TX Date: SEP 1 0 2004

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:

SELF-REPRESENTED

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

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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DISCUSSION: The application was denied by the Director, San Antonio, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on November 14, 1971, in Monterrey, Nuevo Leon, Mexico. The applicant's mother, was born in Weslaco, Texas, on May 9, 1953, and she is a United States (U.S.) citizen. The applicant's father, was born in Zacatecas, Mexico, and he is not a U.S. citizen. The applicant's parents married in Mexico on November 23, 1969. 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 derived U.S. citizenship at birth through his mother.

The director concluded that the applicant had failed to establish his mother was physically present in the United States for at least five years after she turned fourteen years old (on May 9, 1967) and prior to the applicant's birth on November 14, 1971, as required by section 301 of the former Act. The application was denied accordingly.

The applicant asserts generally on appeal that the evidence contained in the record establishes his mother meets the residence requirements set forth in the former Act.

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen, is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service,* 247 F.3d 1026, 1029 (9th Cir., 2000) (citations omitted). The applicant was born in Mexico in 1971. The version of section 301 of the Act that was in effect at that time (section 301(a)(7)) therefore controls his claim to derivative citizenship.

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7) states in pertinent part that:

> The following shall be nationals and citizens of the United States at birth: . . . a person born outside the geographical limits of the United States . . . of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years.

In the present case, the applicant must establish that his mother was physically present in the U.S. for ten years between May 9, 1953, and November 14, 1971, and that five of those years occurred after May 9, 1967, when his mother (Mrs. Ovalle) turned fourteen.

The AAO finds that the record contains birth certificate, school record, and affidavit evidence pertaining to Mrs. physical presence in the United States from the time of her birth until 1969, when Mrs was sixteen years old. Moreover, the AAO notes that the director's decision found that the evidence submitted by the applicant established that Mrs. was physically present in the U.S. from the time of her birth until the year 1969 (when Mrs. was thirteen years old). The evidence in the record reflects however, that Mrs. moved to Mexico in 1969, and that she did not return to the U.S. until after the applicant's birth. Accordingly, the applicant has failed to establish that his mother was physically present in the U.S. for at least five years after she turned fourteen years old, and prior to the applicant's birth, as required by section 301(a)(7) of the former Act.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant in the present case has failed to meet his burden. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.