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

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: SAN DIEGO, CA 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 Diego, California, 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 March 28, 1963, in Tijuana, Mexico. The applicant's father, (Mr) was born in Mexico on October 18, 1934. Mr derived U.S. citizenship at birth through his U.S. citizen father. The applicant's mother, s born in Mexico on February 14, 1935, and she is not a U.S. citizen. The applicant's parents married in Tijuana, Mexico in August 1969. The applicant seeks a certificate of citizenship under section 301(a)(7) of the former Immigration and Nationality Act (the former Act); 8 U.S.C. § 1401, based on the claim that he acquired U.S. citizenship at birth through his father.

The director found the applicant had failed to establish that his father was physically present in the United States for ten years prior to his birth, at least five years of which occurred after he reached the age of fourteen. The application was denied accordingly.

On appeal, the applicant asserts that the evidence in the record establishes he meets the requirements for derivative citizenship through his U.S. citizen father.[1]

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[1] The AAO notes that in his application for citizenship, the applicant also claimed derivative U.S. citizenship through his grandfather. The AAO notes that the provision of law that allows for U.S. citizenship through a U.S. citizen grandparent, section 322 of the former Act, 8 U.S.C. § 1433, relates to acquisition of citizenship by the children (under age 18) of naturalized U.S. citizen parents. The provision is not applicable in the present case.

Section 322 of the former Act states, in pertinent part:

(a) Application of citizen parents; requirements

A parent who is a citizen of the United States may apply to the Attorney General [now the Secretary, Homeland Security, "Secretary"] for a certificate of citizenship on behalf of a child born outside the United States. The Attorney General [Secretary] shall issue such a certificate of citizenship upon proof to the satisfaction of the Attorney General [Secretary] that the following conditions have been fulfilled:

1) At least one parent is a citizen of the United States, whether by birth or naturalization.
2) The child is physically present in the United States pursuant to a lawful admission.
3) The child is under the age of 18 years and in the legal custody of the citizen parent.

. . . .

b) Attainment of citizenship status; receipt of certificate

Upon approval of the application . . . [and] upon taking and subscribing before an officer of the Service [CIS] within the United States to the oath of allegiance required by this chapter of an applicant for naturalization, the child shall become a citizen of the United States and shall be furnished by the Attorney General [Secretary] with a certificate of citizenship.

"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 1963. 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.

In order to derive citizenship under section 301(a)(7) of the former Act, it must be established that when the child was born, the U.S. citizen parent was physically present in the U.S. or its outlying possession for ten years, at least five of which were after the age of fourteen. *See § 301(a)(7) of the former Act.*

In *Matter of V,* 9 I&N Dec. 558, 560 (BIA 1962), the Board of Immigration Appeals determined that the term "physical presence" meant "continuous physical presence" or "residence" in the United States. In order to meet the physical presence requirements as set forth in section 301(a)(7) of the former Act, the applicant must establish that his father was physically present in the U.S. for ten years between October 18, 1934, and March 28, 1963, and that five of those years were after October 18, 1948, when his father turned fourteen.

The evidence pertaining to Mr. physical presence in the United States between October 18, 1934 and March 28, 1963, consists of the following:

> October 23, 2002, Immigration and Naturalization Service (INS, now Citizenship and Immigration Services, CIS) notes from an interview with Mr.
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> A September 22, 1999, affidavit written by Mr. aunt (Elena Ayala-Verdugo), stating that Mr. was baptized in San Ysidro, California on August 30, 1935 and that Mr. ived with her family in Chula Vista, California for many years between 1951 and 1961.
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> A Certificate of Baptism reflecting that Mr. Cortez was baptized at Our Lady of Mt. Carmel Church in San Ysidro, California, on August 30, 1935.

The AAO finds that the baptismal certificate submitted by the applicant establishes Mr. was physically present in the U.S. on August 30, 1935. The AAO finds, however, that although the affidavit and interview notes contained in the record state generally that Mr. was physically present in the U.S. between 1951 and 1961, the documents have no probative value because they lack basic and material details pertaining to the dates and locations of Mr. residence in the United States, and because the statements are uncorroborated by any evidence or information contained in the record.

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. *See also* § 341 of the Act, 8 U.S.C. § 1452. The applicant in the present case failed to establish his father was physically present in the United States for the requisite time period, as set forth in section 301(a)(7) of the former Act. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.