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



U.S. Citizenship
and Immigration
Services

E2

FILE:

Office: PHOENIX, ARIZONA

Date:

APR 21 2005

IN RE:

Applicant:

APPLICATION: Application for Certificate of Citizenship pursuant to § 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

Robert P. Wiemann, Director
Administrative Appeals Office

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

The applicant was born on August 5, 1982 in Mexico. His mother was born in the United States and is a U.S. citizen. His father was born in Mexico and is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to § 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 acquired U.S. citizenship at birth through his mother.

The district director found that the applicant could not derive citizenship through his mother, since she could not have complied with the residence requirement set forth in § 301(a)(7) of the former Act. On appeal, the applicant states that CIS denied his application for a certificate of citizenship because CIS did not have any evidence that the applicant's mother was physically present in Arizona between the ages of 17 and 19. The district director denied the application, however, because the applicant was born when his mother was 17 years old, making it impossible for her to comply with the requirement that she be physically present in the United States for five years after the age of 14, but prior to the applicant's birth, as required by § 301(a)(7) of 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 in this case was born in Mexico in 1982. Section 301(a)(7) of the former Act thus controls his claim to derivative citizenship.

Section 301(a)(7) of the former Act 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.

The applicant must therefore establish the applicant's mother was physically present in the United States prior to the applicant's birth for not less than ten years, at least five of which were after his mother turned fourteen. Since the applicant was born only three years after his mother turned 14, the applicant cannot show that his mother met the physical presence requirement described above.

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. Based on the concerns noted above, the AAO finds that the applicant has not established that his mother complied with the physical presence requirements described at § 301(a)(7) of the former Act. Accordingly, the applicant is not eligible for citizenship under § 301(a)(7) of the former Act, and the appeal will be dismissed. This decision is without prejudice to any petition for alien relative the applicant's mother might submit on the applicant's behalf.

ORDER: The appeal is dismissed.