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U.S. Citizenship  
and Immigration  
Services

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FILE [REDACTED] Office: LOS ANGELES, CA Date: DEC 03 2008

IN RE:



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

ON BEHALF OF APPLICANT:



**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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Los Angeles, 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 September 7, 1958 in Mexico. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents were married in Mexico on November 19, 1987.<sup>1</sup> The applicant's father, a U.S. citizen, was born on December 15, 1928.<sup>2</sup> The applicant seeks a certificate of citizenship claiming that she acquired citizenship at birth through her father pursuant to section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401.

The field office director denied the applicant's citizenship claim, finding that she had failed to submit the requested evidence to establish his father's physical presence in the United States for the required period. The application was accordingly denied.

On appeal, the applicant claims that the director erred in not granting her claim on the basis of her father's testimony, and the documents and affidavits submitted.

"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 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant was born in 1958. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), is therefore applicable to his citizenship claim.<sup>3</sup>

Section 301(a)(7) of the former Act stated 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 and its outlying possessions 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 or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years: *Provided*, That any periods of honorable service in the Armed Forces of the United States by such citizen parent may be included in computing the physical presence requirements of this paragraph.

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<sup>1</sup> The record suggests that the applicant's parents were married in a religious ceremony on April 26, 1948.

<sup>2</sup> Although the Form N-600, Application for Certificate of Citizenship, indicates that the applicant's mother is a U.S. citizen, there is no evidence in the record in this regard. The record suggests the applicant's mother is Mexican, and residing in Mexico. See Form N-600, Application for Certificate of Citizenship; see also, Applicant's parents' marriage certificate.

<sup>3</sup> Section 301(a)(7) of the former Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The requirements of section 301(a)(7) remained the same after the re-designation and until 1986.

The applicant must thus establish that her father was physically present in the United States for at least 10 years prior to the applicant's birth in 1958, five of which after her father's 14<sup>th</sup> birthday on December 15, 1942.

The AAO notes that the record includes the applicant's father's birth certificate, his baptismal and confirmation certificates, her parents' marriage certificate, and the results of a DNA test confirming that [REDACTED] born on December 15, 1928, is the applicant's father. The AAO notes that the record also contains tax and social security documents, as well as affidavits, relating to the applicant's father's presence and employment in the United States after the applicant's birth (in the 1970s and beyond). The AAO further notes that the record contains immigration identification cards dated in 1949, 1952 and 1953, pertaining to [REDACTED] [REDACTED] date of birth is November 15, 1922. He is not the applicant's father. The AAO therefore finds that these immigration records do not pertain to the applicant's father. The evidence in the record does not establish that the applicant's father was physically present in the United States for 10 years, five of which while after December 15, 1942 (his 14<sup>th</sup> birthday).

Pursuant to 8 C.F.R. § 341.2(c), the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant has failed to meet her burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.