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U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE:

[Redacted]

Office: SAN ANTONIO, TX

Date:

**FEB 13 2008**

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:

[Redacted]

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, Chief  
Administrative Appeals Office

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

The record reflects that the applicant was born in Mexico on July 13, 1969. The applicant's parents, as indicated on her birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married on September 21, 1949 in Mexico. The applicant's father is a native-born U.S. citizen, born on March 31, 1929 in Los Angeles, California. The applicant's mother is not a U.S. citizen. 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(a)(7), based on the claim that she acquired U.S. citizenship at birth through her U.S. citizen father.

The interim district director concluded the applicant had failed to establish that her father had the required physical presence in the United States to transmit U.S. citizenship. The district director thus found the applicant ineligible for citizenship under section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), and denied the application accordingly.

On appeal, the applicant, through counsel, submits a brief contending that the interim district director erred in denying the application. The applicant maintains that the evidence submitted establishes that her father was physically present in the United States for the period required by 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 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant in the present matter was born in 1969. Section 301(a)(7) of the former Act therefore applies to the present case.

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.

The applicant must thus establish that her father was physically present in the United States for at least ten years prior to July 13, 1969 (the applicant's date of birth), at least five of which were after March 31, 1943 (applicant's father's 14<sup>th</sup> birthday).

The record contains, in relevant part, the applicant's father's birth certificate and an amendment (dated in 1939), his baptismal certificate, his social security card, an application for U.S. citizen identification card, a vaccination certificate dated in 1939, an application for employment authorization for minors dated in 1946, Junior High School records indicating his presence in the United States during 1942, 1943, 1944 and 1945, an

athletic award certificate indicating his presence in the United States at some point between 1940 and 1941, a letter from [REDACTED] stating he was a parishioner between 1941 and 1949, a social security earnings statement indicating minimal income in 1943, and affidavits from family members stating that the applicant's father worked in farming between 1944 and 1949.

The applicant claims in the Form N-600, Application for Certificate of Citizenship, that her father was physically present in the United States from birth until 1949. The applicant's father's birth and baptismal certificates establish that he was present in the United States in 1929. His vaccination certificate establishes that he was physically present in October 1939. His athletic award certificate establishes that he was present in the United States from 1940 to 1941, and his junior high school records establish that he was in the United States from 1942 to 1945. The applicant's father's employment authorization establishes that he was in the United States in June 1946.

The AAO notes that the affidavits submitted in support of the applicant's claim state that the applicant's father was physically present in the United States from 1944 to 1949. The applicant's aunt, for instance, indicates that the applicant's father worked with the family picking fruit and that there is no documentation relating to their work during this time period between 1944 and 1946. The letter from [REDACTED] indicates that the applicant's father was a parishioner at the church, in California, from 1941 to 1949.<sup>1</sup> The social security earnings statement indicates that the applicant's father was working in Pennsylvania during part of 1943, while his junior high school records suggest that he was enrolled in school during that time. The AAO further notes that the applicant's father obtained employment authorization in 1946, yet there is no evidence that he was employed at any point other than in 1943 (with earnings of \$7.98, \$16.20 and \$62.46).

The AAO notes the Board of Immigration Appeals finding in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that:

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

The AAO notes that the affidavits submitted are neither consistent nor detailed. Moreover, the documentary evidence purporting to establish the applicant's father's presence in the United States includes important discrepancies that cannot be overlooked. The applicant has not established that her father was physically present in the United States for 10 years prior to 1969; at most she can establish that he was in the United States in 1929 and from 1939 to 1945. Additionally, the applicant has not established that her father was physically present in the United States for five years after 1943 (her father's 14<sup>th</sup> birthday). At most, the applicant can establish that her father was in the United States until 1946.

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<sup>1</sup> The AAO notes that the director attempted to verify the statements made in the church letter and found that the church began keeping parishioner records in the 1980s, that the author of the letter did not have any personal recollection of the applicant's father or of signing the letter, and that there was no record of the applicant's father or family receiving any sacraments at the church.

The AAO notes “[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship.” *Fedorenko v United States*, 449 U.S. 490, 506 (1981). 8 C.F.R. § 341.2(c) provides that 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 in the present case has not met her burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.