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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: SAN ANTONIO, TX Date: NOV 04 2009

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.

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).

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father.

The field office director found that the applicant had failed to establish that her father had the requisite 10 years of physical presence in the United States prior to her birth, and therefore concluded that she did not derive U.S. citizenship under section 301(a)(7) of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1964).[1]

On appeal, counsel reasserts the applicant's eligibility and submits additional evidence.

The AAO notes that "[t]he 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." *See Chau v. Immigration and Naturalization Service,* 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant was born in 1964. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7) (1964), is therefore applicable to her case.

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

Section 301(a)(7) of the former Act thus requires that the applicant establish that her father was physically present in the United States for at least 10 years prior to 1964, including at least five years after 1932 (when her father turned 14 years old).

The record in this case provides the following pertinent facts. The applicant was born on May 24, 1964 in Mexico where her father registered her birth. The applicant's parents, as indicated on her

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[1] Section 301(a)(7) of the former Act was re-designated as section 301(g) upon enactment of the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The substantive requirements of this provision remained the same until the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655.

birth certificate, were [redacted] and [redacted] The applicant's father was born in Texas on July 5, 1927. The applicant's parents were married in 1955 in Mexico. The applicant has six siblings who were all born in Mexico between 1956 and 1967.

The record contains the following, relevant evidence. Copies of the applicant's Mexican birth certificate, Mexican birth certificates of five of her siblings, Texas birth certificates of the applicant's father and his two older sisters, baptism and marriage certificates of the applicant's father, Social Security earnings statements of the applicant's father, a family history questionnaire and letters from the applicant, her mother and aunt.

The birth and baptism records of the applicant's father indicate that he was in the United States in 1927 and his Social Security earnings statements show that he was employed in the United States, in pertinent part, for three years from 1962 through 1964. The marriage certificate of the applicant's parents show that her father was in Mexico in 1955. The birth certificates of the applicant and her older siblings show that their births were all registered by their father in Mexico in 1956, 1958, 1960, 1962 and 1964.

On appeal, counsel asserts that the applicant's father was "a migrant worker, and very little, if any, records exist to evidence his presence and employment in the United States." *Form I-290B, Notice of Appeal*, dated July 30, 2007. In her February 27, 2007 letter, the applicant explains that her paternal grandmother died when her father was 18 years old and that he did not keep any photographs or other documents from his childhood. The applicant also states that her father worked as a ranch hand, but did not receive any correspondence and did not keep track of the names of the places where he worked.

While we acknowledge the difficulties associated with documenting the applicant's father's presence in the United States over 50 years ago, we find the statements of the applicant, her mother and paternal aunt fail to provide detailed, probative information sufficient to establish that the applicant's father was in the United States for the requisite period. In her May 27, 2006 letter, the applicant's paternal aunt, [redacted] states, "my brother [redacted] and all our family lived since childhood in the year 1927 until 18 years we where [sic] living in a farm near Tylor Texas and we did not attend school because we where [sic] dedicated to work since children." In her June 26, 2006 letter, the applicant's mother states that she met her husband in Mexico in 1952, that he returned to the United States after they met, but then went back to Mexico before they were married in 1955. After their marriage, the applicant's mother states that her husband returned to the United States for work and would visit her and their children in Mexico whenever he could. The applicant's mother does not state any dates (after 1952) of her husband's residence and employment in the United States before the applicant's birth and she provides no further, probative details.

In sum, the record documents the applicant's father's presence in the United States for only four years (1927, 1962-1964) prior to the applicant's birth. The applicant's mother and paternal aunt

attest to her father's presence in the United States from his birth in 1927 until 1945 and for unspecified dates prior to and during his marriage. However, their statements lack probative and detailed information sufficient to establish the physical presence of the applicant's father in the United States for the requisite period.

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and United States Citizenship and Immigration Services (USCIS) lacks statutory authority to issue a Certificate of Citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). *See also Fedorenko v United States*, 449 U.S. 490, 506 (1981) ("[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship."). Courts may not use their equitable powers to grant citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *INS v. Pangilinan,* 486 U.S. at 883-84.

In certificate of citizenship proceedings, the claimant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c) The applicant in the present case has not met her burden. Consequently, the appeal will be dismissed.

ORDER: The appeal is dismissed.