U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: ALBUQUERQUE, NM Date: OCT 05 2009

IN RE: [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)(1975).

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).

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Acting Field Office Director, Albuquerque, New Mexico, 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 April 22, 1975 in Mexico. The applicant's parents, as indicated on his birth certificate, are [redacted] and [redacted]. The applicant's mother is a native-born U.S. citizen, born in El Paso, Texas on December 13, 1944. The applicant's parents were married in 1970 in Mexico. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother.

The acting field office director found that the applicant had failed to establish that his mother had the required 10 years of physical presence in the United States prior to his birth, and therefore concluded that he 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)(1975).[1] The acting field office director also found the applicant to be ineligible for U.S. citizenship under sections 320 and 322 of the Act, 8 U.S.C. §§ 1431 and 1433.

On appeal, the applicant, through counsel, maintains that he acquired U.S. citizenship at birth through his mother under section 301 of the Act, 8 U.S.C. § 1401. Specifically, the applicant claims that he has established his mother's physical presence as required by the statute. *See* Applicant's Appeal Brief.

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 1975. Section 301(a)(7) of the former Act is therefore applicable to this 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

[1] Although the requirements of sections 301(a)(7) and 301(g) were the same until 1986, section 301(a)(7) of the former Act was not re-designated as section 301(g) until the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046.

> 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 his mother was physically present in the United States for at least 10 years prior to 1975, five of which after 1958 (when his mother turned 14 years old).

The record contains, in relevant part, the applicant's birth certificate, the applicant's parents' marriage certificate, the applicant's mother's birth, baptismal and confirmation certificates. The record also contains a resident identification card issued in 1974 to the applicant's mother, the applicant's maternal grandparents' marriage certificate dated in 1949 in El Paso, Texas, three statements executed by family friends, as well as an affidavit executed by the applicant's mother. The applicant's mother claims that she lived in the United States from birth until December 1950, then from January 1960 to December 1969, and from 1978 to the present. *See* Affidavit of [redacted]

The AAO finds that the applicant has failed to establish that his mother was physically present in the United States as required. The AAO notes that the only relevant evidence submitted is the applicant's mother's testimony and affidavit, the applicant's family friends' statements, the applicant's mother's birth, baptism and confirmation certificates and resident identification card, and the applicant's grandparents' marriage certificate. The evidence in the record suggests, at best, that the applicant's mother was physically present in the United States from birth until 1949 (when her parents married) and then in 1962 and 1965-67.

The AAO further 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 applicant concedes that his mother has had three strokes and that her memory is compromised. Further, the statements submitted by [redacted] and [redacted] are vague and lacking of any detail. There is also no indication of how old these witnesses are, or how old they were back in 1962, 1965-66 or 1967 when they met the applicant's mother. The AAO notes further that the statements only corroborate the claim that the applicant's mother was present in the United States from 1962-1967, a period of at most five years. The applicant's mother's birth, baptism, and confirmation certificates, as well as her parents' marriage certificate, confirm that she was present in the United States in 1944, 1946 and 1949. The record therefore does not, by a preponderance of the

evidence, establish that the applicant's mother was physically present in the United States for ten years prior to the applicant's birth in 1975.

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 AAO finds that the applicant has not met his burden of proof and the appeal will be dismissed.

ORDER: The appeal is dismissed.