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U.S. Department of Homeland Security
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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[redacted]

FILE: [redacted] Office: HARLINGEN, TX Date: FEB 17 2010

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 District Director, Harlingen, Texas, 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 May 6, 1975 in Tamaulipas, Mexico. The applicant's parents, as indicated on her birth certificate, are [redacted] and [redacted]. The applicant's father was born in Mexico in 1939, but acquired U.S. citizenship at birth. The applicant's parents were married in Mexico in 1972. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father under section 301(a)(7) of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1975).[1]

The district director found that the applicant had failed to establish that her father had the required years of physical presence in the United States. The director noted that the documents submitted pertained to [redacted] and that there was no evidence to establish that [redacted] the applicant's father, was also known as [redacted]

On appeal, the applicant, through counsel, maintains that she has established her father's physical presence as required by the statute. *See* Applicant's Appeal Statement. Counsel asserts that [redacted] and [redacted] is one and the same person. *Id.* The applicant submits affidavits executed by [redacted] and [redacted]

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, 8 U.S.C. § 1401(a)(7) (1975), is therefore applicable to this 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.

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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.

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 1975, five of which after 1953 (when her father turned 14 years old).

In support of her claim, the applicant submitted her birth certificate, her father's certificate of citizenship, her parents' marriage certificate indicating that they were married in Mexico in 1972, documents establishing the physical presence of [redacted] from 1966 to 1970, and a number of affidavits (including those submitted on appeal) stating generally that the applicant's father came to the United States in 1958 and that he used the name [redacted]. Specifically, only the affidavit of [redacted] states that the applicant's father came to the United States in 1958. The other affidavits in the record only generally indicate that the applicant's father was physically present in the United States in the 1960s and 1970s.

The AAO finds that the record does not establish that the applicant's father was physically present in the United States for 10 years prior to 1975, five of which after 1953 (his 14th birthday). Even if [redacted] and [redacted] is one and the same person, the evidence in the record establishes, at best, physical presence from 1966 to 1970. The only other indication that [redacted] was present in the United States is the statement in [redacted] affidavit that he came to the United States in 1958. The applicant submitted no corroborating evidence to establish her father's presence in the United States prior to 1966. In 1972, the applicant's father was already back in Mexico as evidenced by his marriage certificate.

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 United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant"). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

The applicant's burden is to establish her father's physical presence by a preponderance of the evidence. There is no evidence in the record to suggest that the applicant's father was present in the United States for 10 years prior to 1975. She has therefore failed to meet her burden and her appeal will therefore be dismissed.

ORDER: The appeal is dismissed.