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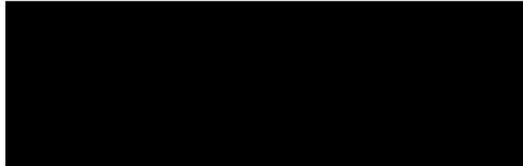
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED] Office: SAN ANTONIO, TX Date: SEP 08 2010

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under former Section 301 of the Immigration and Nationality Act, 8 U.S.C. § 1401 (1971)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 record reflects that the applicant was born on April 9, 1971 in Mexico. The applicant's parents, as indicated on his birth certificate, are [REDACTED]. The applicant's parents were married in Texas on February 1, 1971. The applicant's mother was born on January 24, 1939 in Mexico, but acquired U.S. citizenship at birth through a U.S. citizen parent. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother.

The field office director denied the applicant's citizenship claim upon finding that the applicant had failed to establish that his mother had the period of physical presence in the United States required by former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1407(a)(7) (1960). The director noted that 11 of the applicant's siblings were born in Mexico from 1954 to 1974, and that the testimony submitted and records reviewed did not support the applicant's claim that his mother was physically present in the United States starting in 1954. The application was accordingly denied.

On appeal, the applicant states that his citizenship claim was denied in error. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The applicant indicates that a brief or additional evidence would be submitted within 30 days. On June 29, 2010, upon the applicant's request, the AAO granted the applicant an extension of time in which to submit a brief or additional evidence. The AAO noted that no further extensions would be given. The applicant's second request for an extension of time in which to file a brief or additional evidence, dated July 13, 2010, is hereby denied.

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. See *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1971. Former section 301(a)(7) of the Act therefore applies to the present case.¹

Former section 301(a)(7) of the Act stated, in pertinent part, 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

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.

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 his mother was physically present in the United States for 10 years prior to 1971, five of which were after the age of 14 (after 1953), as required under former section 301(a)(7) of the Act. The record contains a copy of the applicant's mother's birth certificate (indicating that she was born in Mexico in 1939), a copy of her certificate of citizenship issued in 1970, sworn statements by family members and acquaintances, and records relating to the applicant's siblings.

The AAO finds that the statements submitted do not provide sufficient detail or have probative value in light of his 11 siblings' births in Mexico from 1954 to 1974. Additionally, the AAO notes that the applicant's mother indicated that she resided in Mexico in the applicant's birth certificate in 1971, in her application for a certificate of citizenship (which was issued in 1970), and in the applicant's father's immigration petition (which was filed in 1971). The testimony and written statements of the applicant's family and acquaintances are generalized and do not provide a consistent, detailed picture of where the applicant's mother resided between 1954 and 1971. The record suggests that the applicant's mother was present in the United States sometime during that period of time, but there is no evidence to indicate that she was present for ten years prior to 1971, five of which while over the age of 14 (after 1953). The AAO therefore finds that the applicant has failed to establish that his mother had the physical presence required to transmit U.S. citizenship under former section 301(a)(7) of the Act.

The burden in these proceedings is on the applicant to establish eligibility for U.S. citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant in this case has not met his burden of proof. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.