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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

E₂

FILE:

Office: HARLINGEN, TX

Date: **FEB 23 2011**

IN RE:

Applicant: [REDACTED]

APPLICATION:

Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act, 8 U.S.C. § 1401 (1968)

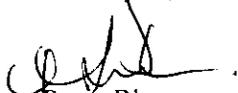
ON BEHALF OF APPLICANT:

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 \$630. 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, 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 [REDACTED]. The applicant's parents, as indicated in his birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married in Mexico on November 15, 1967. [REDACTED] The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father.

The field office director denied the applicant's citizenship claim upon finding that he had failed to establish his eligibility for U.S. citizenship. The director noted that the applicant's birth certificate and his parents' marriage certificate were issued on the same date, and that an investigation revealed another birth registration for him in 1980 listing only his mother and no evidence of his parents' marriage.

On appeal, the applicant, through counsel, states that the applicant has established his eligibility for U.S. citizenship pursuant to former section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g)(1968).¹ The applicant maintains that his father had the required physical presence in the United States to transmit U.S. citizenship, and that the director's note about the simultaneous issuance of certificates is irrelevant. See Statement Accompanying Appeal.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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 1968. Former section 301(g) of the Act therefore applies to the present case.

Former section 301(g) 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 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

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.

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 therefore establish that his father was physically present in the United States for 10 years prior to 1968, five of which were after the age of 14 (after 1925).

With respect to the applicant's father's physical presence in the United States, the record contains a United States Air Force letter dated in 1956, social security earnings history listing employment in 1953, 1961-64, 1966-67 and 1969-1970, a copy of an insurance policy and bank records dated in 1963, 1966 and 1967, and the applicant's half brother's birth certificate dated in 1941. The record also contains copies of correspondence dated after the applicant's birth, and therefore irrelevant.

The evidence in the record does not establish that the applicant's father was physically present in the United States for 10 years prior to 1968. The social security earnings reflect, at most, earnings during seven years. The evidence related to other dates, such as the applicant's half brother's birth certificate, do not establish the applicant's father's physical presence in the United States. The applicant's mother's affidavit states that the applicant's father was a missionary and was residing in Mexico at all times during their marriage. She met the applicant's father in 1966 and they were married in 1967. The evidence in the record does not establish that the applicant's father was physically present in the United States for 10 years prior to 1968, his date of birth.

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 failed to meet his burden of proof. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.