

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



E2

FILE:



Office: DES MOINES, IA

Date:

JAN 05 2011

IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship under Former Section 301 of the Immigration and Nationality Act, 8 U.S.C. § 1401 (1965)

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 [REDACTED] 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 February 3, 1965 in Mexico. Her parents, as indicated on her birth certificate, are [REDACTED]. The applicant's mother was born on May 13, 1928 in Texas. The applicant's parents were married in Mexico in 1943. The applicant's father is not a U.S. citizen. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her mother.

The field office director denied the applicant's citizenship claim upon finding that she had failed to establish that her mother was physically present in the United States as required by former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7).

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the applicant, through counsel, maintains that her mother had the required physical presence in the United States. See Appeal Brief.

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 1965. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7) (1965), 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 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 therefore establish that her mother was physically present in the United States for 10 years prior to 1965, five of which were after attaining the age of 14 (in 1942).

The record contains, in relevant part, a copy of the applicant's birth certificate, a copy of the applicant's mother's birth, baptism and marriage certificates, and affidavits executed by the

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.

applicant's mother and two family friends. The record also contains a copy of the applicant's siblings' Mexican birth certificates.

The record does not establish, by a preponderance of the evidence, that the applicant's mother was physically present in the United States for 10 years prior to 1965, five of which were after 1942. The applicant's parents were married in Mexico in 1943 and the applicant's older siblings were born in Mexico in 1943 and 1946. The applicant's mother was 15 when she married and had her first child in Mexico. Her affidavit states that she lived in the United States until she was 5, when she went to Mexico for a brief period and then returned to the United States until she was almost 15 years old. The applicant's mother states that before her son was born in 1943 she visited her aunt in Texas once a month for 2 weeks. After her son was born (in 1943), she returned to the U.S. for one year and then went back to Mexico. Thereafter, she states that she visited her aunt in Texas every month for two weeks until she had her second son (in 1946). The brief statements in the applicant's mother's affidavit are insufficient to establish that she was physically present in the United States until she was 15 years old. The timeline she provides in her affidavit does not contain probative details of her residence in the United States. In her affidavit, [REDACTED] the applicant's mother's friend, states that she met her when she was 15 years old. [REDACTED] therefore cannot attest to the applicant's mother's physical presence prior to 1943. [REDACTED] states in her affidavit that she met the applicant's mother "when she was very little." Like [REDACTED] affidavit, [REDACTED] brief statements do not establish that the applicant's mother was physically present in the United States for 10 years prior to the applicant's birth.

"There 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). The burden in these proceedings is on the applicant to establish her mother's physical presence in the United States by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant has failed to meet her burden of proof and her appeal will be dismissed.

ORDER: The appeal is dismissed.