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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

[redacted]

Date: FEB 28 2012 Office: MIAMI, FL

FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1961).

ON BEHALF OF APPLICANT:

[redacted]

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, Miami, Florida, and the matter 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] 1961 in Venezuela. The applicant's father, [redacted] was born in New York on [redacted] 1930. The applicant's mother is not a U.S. citizen. The applicant's parents were married in Venezuela in 1955. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father.

The field office director denied the applicant's citizenship claim upon finding that she had failed to establish her eligibility under former section 301(a)(7) of the Act, 8 U.S.C. §1401(a)(7)(1961), because she could not demonstrate that her father was physically present in the United States for the statutorily required period of time.

On appeal, the applicant, through counsel, maintains that her father was physically present in the United States as required. *See* Applicant's Appeal Statement Accompanying Form I-290B, Notice of Appeal to the AAO.

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 1961. 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 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.

In order to acquire U.S. citizenship at birth under former section 301(a)(7) of the Act, the applicant must therefore establish that her father was physically present in the United States for 10 years prior to 1961, five of which were after the age of 14 (after 1944).

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[1]Former section 301(a)(7) of the 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.

The applicant claims that her father was physically present in the United States from birth, in 1930, until 1951. In support of her claim, the applicant submitted, in part, two affidavits executed by her paternal aunt [redacted] copies of her father's birth certificate and passport, copies of correspondence dated in 1950 and documents relating to school expenses for the applicant in 1950 and 1951. The AAO finds the evidence submitted to be insufficient to establish that the applicant's father was physically present in the United States as claimed. The record suggests that he was present in the United States in 1950 and 1951 while attending school, at birth in 1930, and in 1937. Nevertheless, there is no evidence other than the applicant's aunt's statement that the applicant's father was present in the United States in the years in between, for a total of ten years prior to 1961 (five of which after 1944). The AAO notes that the applicant has submitted some evidence of his paternal aunt's physical presence in the United States.

The Board of Immigration Appeals held 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.)

As noted by the director, the applicant's father's 1950 letter to his mother indicates that he was learning the English language. The applicant has been unable to explain this discrepancy in relation to her claim that her father had been continuously present in the United States since birth. The record contains no documentary evidence, such as census, medical or school records, to suggest that the applicant's father was present in the United States between 1937 and 1950. The AAO finds that the preponderance of the evidence in the record fails to establish that the applicant's father was physically present in the United States for ten years prior to 1961, five of which after 1944.

"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 applicant must meet his burden of proof by establishing the claimed citizenship by a preponderance of the evidence. Here, the applicant has not met this burden. Accordingly, the applicant is not eligible for a certificate of citizenship and the appeal will be dismissed.

ORDER: The appeal is dismissed.