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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

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Date: **MAY 08 2012**

Office: DALLAS, TX

FILE: 

IN RE:

Applicant: 

APPLICATION:

Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1964).

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, Dallas, Texas, 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] 1964 in Mexico. The applicant's mother, [REDACTED] was born in Colorado on [REDACTED] 1921. The applicant's father, [REDACTED] is not a U.S. citizen. The applicant's parents were married in Mexico in 1944. 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 he had failed to establish his eligibility under former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1401(a)(7)(1964), because he could not demonstrate that his mother was physically present in the United States for the statutorily required period of time.

On appeal, the applicant, through counsel, maintains that he acquired U.S. citizenship at birth and that the director erred in denying him an opportunity to present his mother's sworn testimony in support of his claim. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO; *see also* Appeal Brief.

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 1964. 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.

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.

In order to acquire U.S. citizenship at birth under former section 301(a)(7) of the Act, the applicant must therefore establish that his mother was physically present in the United States for 10 years prior to 1964, five of which were after the age of 14 (after 1935).

The record contains, in relevant part, a copy of the applicant's mother's birth and baptismal certificates, a copy of the applicant's maternal uncle's birth certificate, a copy of an affidavit of parentage and physical presence indicating that the applicant's mother was present in Colorado from 1921 to 1932, in Illinois in 1932, and in California from 1980 to the present, sworn statements from the applicant's mother's acquaintances indicating that she was present in Chicago in 1933, a copy of the applicant's sister's U.S. passport, a list of the applicant's 12 younger siblings' names indicating they were born in Mexico starting in 1945 through 1963, and documents relating to the applicant's maternal grandparents.

The evidence in the record fails to establish that the applicant's mother was physically present in the United States for five years after her fourteenth birthday (in 1935). The applicant's mother's birth and baptismal certificates, and her brother's birth certificate suggest that the applicant's mother was present in the United States during her early childhood. The sworn statements submitted indicate, at best, that the applicant's mother was in Chicago in 1933. The applicant's parents, however, were married in Mexico in 1944, and had the applicant's 12 younger siblings in Mexico from 1945 to 1963. The evidence therefore suggests that the applicant's mother was not present in the United States for 10 years prior to 1964, at least of five which were after 1935. The applicant has not established that his mother had the required physical presence in the United States to transmit U.S. citizenship to him at birth under section 301 of the Act.

“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. 8 C.F.R. § 320.3. 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.