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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:

AUG 02 2012

Office: LOS ANGELES, CA

FILE:



IN RE:

Applicant:



APPLICATION:

Application for Certificate of Citizenship pursuant to section 301 of the
Immigration and Nationality Act, 8 U.S.C. § 1401 (1961)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED¹

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.

Jerry Rhew
Chief, Administrative Appeals Office

¹ The applicant's appeal was filed by attorney Hideaki Asaka, but Mr. Asaka has since withdrawn his appearance as attorney of record in this case.

DISCUSSION: The application was denied by the District Director, Los Angeles, California, 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 May 23, 1961 in Mexico to [REDACTED] and [REDACTED]. The applicant's father was born in Mexico on August 29, 1936, but acquired U.S. citizenship at birth through his parents. The applicant's parents were married in Mexico in 1960. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father under former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7)(1961).

The district director denied the applicant's citizenship claim upon finding that he had not established that his father was physically present in the United States as required by former section 301(a)(7) of the Act.

On appeal, the applicant states that he is eligible for a certificate of citizenship. In support of his claim, the applicant submits the declaration of Ms. [REDACTED], his paternal grandmother.

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.²

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 his father was physically present in the United States for 10 years prior to 1961, five of which were after the age of 14 (after 1950).

² 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.

The record contains the following evidence relevant to the applicant's father's physical presence in the United States: 1) the applicant's birth certificate; 2) the applicant's father's birth certificate; 3) the applicant's grandparents' birth and marriage certificates; 4) a social security earnings record pertaining to the applicant's father's employment income for the years 1955 and 1956; and 5) a declaration executed by Ms. Ann Stewart, the applicant's paternal grandmother.

The applicant's grandmother states in her declaration that she returned to the United States in 1936, a few months after the applicant's father was born. *See* Declaration of [REDACTED] at ¶8. She states that she remained in Texas until 1944. *Id.* at ¶ 10. She claims that between 1944 and 1954 she returned to the United States with the applicant's father for three months every year. *Id.* at ¶ 14. Lastly, she states that the applicant's father moved to California in 1954, where he resided until 1959. *Id.* at ¶¶19-21. As noted above, the record contains a social security earnings statement indicating that the applicant's father earned income in the United States in 1955 and 1956. No other declarations or affidavits, or documentary evidence, were provided in support of the applicant's claim.

The AAO finds that the record does not support the applicant's claim that his father was physically present in the United States for 10 years prior to 1961. The applicant's claim rests solely on the testimony of his grandmother and a social security statement evidencing employment in 1955 and 1956. Although the applicant's grandmother's affidavit is detailed, she is not a disinterested witness and her statements are not corroborated by any other family members, co-workers, or neighbors, nor has the applicant submitted any school records or other documentary evidence to establish 10 years of presence in the United States prior to 1961.

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.)

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.