

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY

E₁



Date: **JAN 26 2012**

Office: HARLINGEN, TX

FILE: 

IN RE: 

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

ON BEHALF OF APPLICANT:

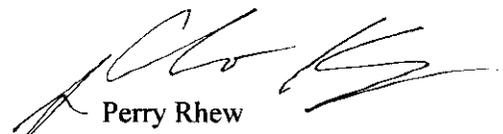


INSTRUCTIONS:

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 Field Office Director, Harlingen, Texas, denied the Application for Certificate of Citizenship (Form N-600) and the Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed. The AAO's previous order dismissing the appeal will be affirmed.

The record reflects that the applicant was born on [REDACTED] Mexico. The applicant's birth certificate lists his parents as [REDACTED]. The applicant's parents were married in [REDACTED] Tamaulipas, on [REDACTED]. The applicant's mother is a U.S. citizen by birth in [REDACTED], Tamaulipas on [REDACTED].¹ 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 that his mother was physically present in the United States as required under former section 301 of the Act. *See Field Office Director's Decision*, dated August 18, 2010.

On appeal, counsel contended that the applicant's mother had the required physical presence in the United States. *See Brief in Support of Appeal*.

The AAO found that the applicant did not acquire U.S. citizenship at birth because he had failed to establish that his mother was physically present in the United States as required under former section 301 of the Act. *See AAO's Decision*, dated March 10, 2011.

In his motion to reconsider, counsel states that the AAO's decision cited an affidavit in association with the applicant's 2005 application and contends that such an affidavit was not submitted in support of the 2005 application. *See Brief in Support of Motion to Reconsider*. In support of his contentions, counsel submits only the referenced brief. The entire record was reviewed *de novo* in rendering a decision on the motion.

On motion, counsel contends that the AAO erred in stating that the applicant's mother submitted an affidavit in connection with the applicant's 2005 application in which she stated that she only resided in Rio Rico until after the birth of her eldest child. A review of the file reveals no prejudicial error. Although the applicant's mother did not provide an affidavit containing that specific statement; the applicant's mother did submit an affidavit, dated March 2, 2010, in which she states that she resided in Rio Rico in the home of her parents until she married her husband on [REDACTED]. She states that after she and her husband were married they moved in with her in-laws, who also lived in Rio Rico. She states that her oldest child was born in Rio Rico in [REDACTED] and that her second child was born in Monterrey because she and her husband had moved there temporarily with her mother-in-law. She states that she returned to Rio Rico a month or so after her second child was born. She states that she and her husband moved to [REDACTED] a few months before she gave birth to the applicant in [REDACTED]. The applicant's mother's statement lacks probative detail and is inconsistent with her prior testimony. On June 17, 2004, the applicant's mother provided oral testimony to an immigration officer

¹ Rio Rico, a town in the Horton Tract, was part of the United States until 1970. *See Matter of Cantu*, 17 I&N Dec. 190 (BIA; AG 1978).

in connection with the applicant's sibling's application, in which she stated that she resided with her brother in the United States from age nine until she returned to Mexico at age fifteen.

Apart from the description of the applicant's mother's prior statements in the AAO's prior decision, counsel fails to state any legal basis to show that the AAO's prior decision was erroneous. A motion to reconsider must be supported by any pertinent precedent decisions to show that the prior determination was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider must also establish that the prior decision was incorrect based on the record at the time. *Id.* Counsel's submission fails to meet these requirements and consequently must be dismissed pursuant to the regulation at 8 C.F.R. § 103.5(a)(4).

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Immigration and Nationality Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). The applicant has failed to establish by a preponderance of the evidence that his mother resided in the United States for the period required for him to have acquired citizenship at birth under former section 301 of the Act.

ORDER: The motion to reconsider is dismissed. The AAO's decision, dated March 10, 2011, is affirmed and the appeal remains dismissed.