

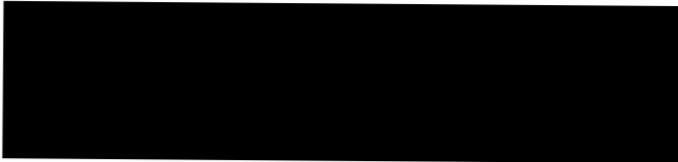
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: SAN ANTONIO, TEXAS Date: DEC 30 2008

IN RE: Applicant [REDACTED]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Antonio, Texas, and came before the Administrative Appeals Office (AAO) on appeal. The appeal was dismissed. The applicant filed a new Form N-600, Application for Certificate of Citizenship on June 19, 2008. Pursuant to the regulations, the new application will be deemed to be a motion to reopen or reconsider. The motion will be dismissed.

The record reflects that the applicant was born on December 25, 1957 in Mexico. The applicant's father, [REDACTED], was born in the United States on June 4, 1930. The applicant's mother is not a U.S. citizen. The applicant's parents were married in 1951 in Nuevo Leon, Mexico. Their marriage was again registered in 1973. The applicant claims that he acquired U.S. citizenship at birth from his father.

The applicant's first Form N-600, Application for Certificate of Citizenship, was denied by the District Director on June 13, 2000. The AAO dismissed the applicant's appeal of the denial on March 17, 2001. On June 19, 2008, the applicant filed a new Form N-600, Application for Certificate of Citizenship.

At the outset, the AAO notes that the applicant's June 19, 2008 application must be rejected pursuant to the regulations. 8 C.F.R. § 341.6, states, in relevant part,

“[a]fter an application for a Certificate of Citizenship has been denied and the appeal time has run, a second application submitted by the same individual shall be rejected and the applicant instructed to submit a motion for reopening or reconsideration”

The applicant's June 23, 2008 application will therefore be deemed to be a motion to reopen or reconsider.

“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.” *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant was born in 1957. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), is therefore applicable to his citizenship claim.¹

Section 301(a)(7) of the former Act stated 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,*

¹ Section 301(a)(7) of the former Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The requirements of section 301(a)(7) remained the same after the re-designation and until 1986.

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 thus establish that his father was physically present in the United States for at least ten years prior to the applicant's birth in 1957, five of which after his father's 14th birthday in 1944.

The applicant's first application was accompanied by a copy of his father's social security earnings statement, a statement from his father reflecting his employment history, and his sisters' certificate of citizenship. As noted by the District Director, and the AAO, the evidence in the record did not establish that the applicant's father had the physical presence in the United States required by section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7). The applicant's new application is not accompanied by any additional evidence or argument warranting reopening or reconsideration of the previous decisions in this case. The applicant's motion to reopen or reconsider must therefore be dismissed.

Pursuant to 8 C.F.R. § 341.2(c), the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The applicant has not met his burden. His application is rejected pursuant to the regulations, and the motion to reopen or reconsider is dismissed.

ORDER: The application is rejected. The motion is dismissed.