



U.S. Citizenship  
and Immigration  
Services

E2

[REDACTED]

FILE: [REDACTED] Office: DALLAS, TX Date: DEC 08 2009

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 301(a)(7) of the former Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7).

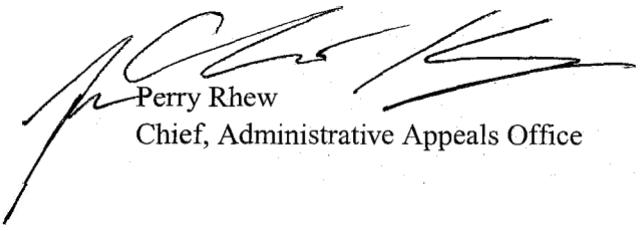
ON BEHALF OF APPLICANT:

[REDACTED]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).



Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Dallas, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on January 29, 1965 in Mexico. The applicant's parents, as indicated on her birth certificate, are [REDACTED] and [REDACTED]. The applicant's father is a native-born U.S. citizen, born on March 14, 1921. The applicant's parents were married in Mexico in 1948. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father.

The field office director found that the applicant had failed to establish that her father had the required five years of physical presence in the United States after attaining the age of 14 years, and therefore concluded that she did not derive U.S. citizenship under section 301(a)(7) of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1965).<sup>1</sup>

On appeal, the applicant maintains that she has established her father's physical presence as required by the statute. *See Applicant's Appeal Statement.*

The AAO notes that "[t]he 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, 1029 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant was born in 1965. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7) (1965), is therefore applicable to this case.

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*, 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.

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<sup>1</sup> 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.

Section 301(a)(7) of the former Act, thus requires that the applicant establish that her father was physically present in the United States for at least 10 years prior to 1965, five of which after 1935 (when her father turned 14 years old).

In support of her claim, the applicant submitted her father's birth and baptismal certificates, a copy of a census report, her parents' marriage registration in Mexico in 1948, her birth certificate, her father's social security earnings report relating to the period after July 1965, statements of earnings relating to her father's employment in the 1980s, a statement by a friend of the applicant's father stating he knew him since 1935, her brother's certificate of citizenship, and copies of her paternal aunt's U.S. birth certificates. The AAO notes that the applicant does not submit any additional evidence on appeal.

The AAO finds that the record does not establish that the applicant's father was physically present in the United States for five years after 1935 (his 14<sup>th</sup> birthday) and before the applicant's birth (in 1965). The applicant's case must be evaluated on the basis of the evidence in the record, and cannot be determined by reliance on her brother's certificate of citizenship. The AAO notes, in this regard, that the applicant's brother was born in 1972 and that there is evidence that the applicant's father was in the United States after July 1965.

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and United States Citizenship and Immigration Services (USCIS) lacks statutory authority to issue a Certificate of Citizenship when an applicant fails to meet the relevant statutory provisions set forth in the Act. A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988); *see also United States v. Manzi*, 276 U.S. 463, 467 (1928) (stating that "citizenship is a high privilege, and when doubts exist concerning a grant of it ... they should be resolved in favor of the United States and against the claimant"). Moreover, "it has been universally accepted that the burden is on the alien applicant to show his eligibility for citizenship in every respect." *Berenyi v. District Director, INS*, 385 U.S. 630, 637 (1967).

The applicant's burden is to establish her father's physical presence by a preponderance of the evidence. There is no evidence in the record to suggest that the applicant's father was present in the United States for five years between 1935 and 1965. She has failed to meet her burden and her appeal will therefore be dismissed.

**ORDER:** The appeal is dismissed.