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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

Office: HOUSTON

Date:

JUN 23 2009

IN RE:



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:

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.

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Houston, 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 May 31, 1965 in Mexico. The applicant's parents, as indicated on her birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married in 1952. The applicant's mother was born in Texas on December 18, 1926. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her mother.

The field office director found that the applicant had failed to establish that her mother had the required 10 years of physical presence in the United States prior to her birth, 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).¹ The director also questioned why the applicant's name appears different from the one listed on her birth certificate.

On appeal, the applicant first explains that the name given to her at her baptism was [REDACTED] but that her given name is [REDACTED]. The applicant states she used the name [REDACTED] in her school and legal documents. The applicant further states that her mother had the required physical presence in the United States, and in support submits her brother's birth and baptismal certificates dated in 1953, 1955, 1956, and 1957 and school records purporting to indicate that her mother was present in the United States in 1963, 1965 and 1966.

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." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant was born in 1965. Section 301(a)(7) of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401(a)(7), is therefore applicable to this case.

Section 301(a)(7) of the former Act states 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

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.

such citizen parent may be included in computing the physical presence requirements of this paragraph.

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), thus requires that the applicant establish that her mother was physically present in the United States for at least 10 years prior to 1965, five of which after 1940 (when her mother turned 14 years old).

The record contains, in relevant part, a copy of the applicant's birth certificate, the applicant's baptismal certificate, the applicant's parent's marriage certificate, the applicant's brother's school records submitted on appeal, the applicant's siblings New Mexico birth and baptismal certificates dated in 1953, 1955, 1956, and 1957. The AAO notes that the applicant's claim that her birth was not registered, and her explanation regarding the different name on her baptismal certificate, cannot be reconciled with the fact that the applicant's record contains a birth certificate (listing her name as [REDACTED]).

The AAO cannot find, based on the evidence in the record, that the applicant's mother was present in the United States for the required period of time. Moreover, the applicant has also failed to establish that she is the daughter of a U.S. citizen, as her name is not the one listed on the birth or baptismal certificates provided. The AAO notes further that her mother's birth was registered after 27 years, and that the person listed as "mother" in her siblings' birth certificates is not the same. In sum, the applicant has failed to submit sufficient evidence to explain the discrepancies in the record or provide a context for her claim. She has also failed to establish that her mother was physically present in the United States for 10 years as required by section 301(a)(7) of the Act.

The AAO notes "[t]here 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). 8 C.F.R. § 341.2(c) provides that 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 failed to meet her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.