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U.S. Citizenship
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Services

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[redacted]

FILE: [redacted] Office: HARLINGEN, TX Date: MAR 30 2009

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:

[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).

Ellen C. Goleman

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Harlingen, 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 October 26, 1971 in Mexico. The applicant's parents are and . The applicant's mother was born in Texas on August 25, 1934. The applicant's parents were married in Mexico in 1952. The applicant seeks a certificate of citizenship claiming that he acquired citizenship at birth through his mother pursuant to section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401.

The district director denied the applicant's citizenship claim upon finding that he had failed to submit sufficient evidence to establish his mother's physical presence in the United States for the required period. The application was accordingly denied.

On appeal, the applicant claims that the district director erred in not giving adequate weight to the affidavits he provided in support of his claim that his mother had the required physical presence in the United States. *See* Applicant's Appeal Brief.

"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 1971. 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,* 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 mother was physically present in the United States for at least 10 years prior to the applicant's birth in October 1971, five of which after his mother's 14th birthday in August 1948.

The record contains, in relevant part, the applicant's mother's birth and baptismal records dated 1934, the applicant's uncle's birth and baptismal records dated 1936, the applicant's aunt's birth and baptismal records dated 1938, the applicant's parents' marriage certificate, social security records

[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.

indicating earnings by the applicant's mother during the years 1959 to 1963, birth records of the applicant's siblings, and the applicant's birth certificate. The record also contains affidavits by the applicant's mother, relatives and acquaintances. A transcript of the applicant's proceedings before the immigration judge, as well as the immigration judge's oral decision, are also part of the record.

The applicant has previously filed two Forms N-600, Application for Certificate of Citizenship, in 1986 and 2003, respectively. The applications were both denied. The instant Form N-600, the applicant's third, must be therefore be rejected pursuant to the regulations. The regulations, at 8 C.F.R. § 341.6, state that "[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 . . . ."

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The applicant has not provided any additional evidence or argument that would warrant reopening or reconsideration of the previous decision in this case. The AAO notes the Board of Immigration Appeals finding 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 applicant's claim is primarily supported by affidavits from family and friends, often vague and contradictory. That was the conclusion reached in the denial of the applicant's application in 1986, again in 2003, and by the immigration judge. The documentary evidence in the records does not suggest that the applicant's mother was physically present in the United States for five years after 1948 (prior to 1971). **The instant application does not contain any additional evidence.** The applicant has therefore failed to meet his burden to prove by a preponderance of the evidence that his mother had 5 years of physical presence in the United States after her 14th birthday. 8 C.F.R. § 341.2(c). The instant application for certificate of citizenship will be rejected, and that appeal will be dismissed.

ORDER: The application is rejected, the appeal is dismissed.