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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE: [Redacted] Office: SAN ANTONIO, TX Date: NOV 10 2009

IN RE: Applicant: [Redacted]

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

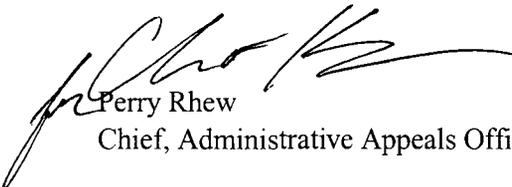
ON BEHALF OF APPLICANT:



**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, San Antonio, 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 February 20, 1954 in Mexico. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents were married in Mexico in 1944. The applicant claims that his mother was born in the United States in 1927. The applicant seeks a certificate of citizenship pursuant to section 301 of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1401, based on the claim that he acquired U.S. citizenship through his mother.

The field office director concluded that the applicant did not acquire U.S. citizenship upon finding that his mother was not born in the United States as claimed. The director further noted that the applicant had not presented objective documentary evidence to establish his mother's required physical presence in the United States. The application was accordingly denied.

On appeal, the applicant, through counsel, claims that the doctrine of *res judicata* requires approval of his application. *See Applicant's Appeal Brief at 4.* Specifically, counsel notes that the Immigration Judge terminated the applicant's removal proceedings after analyzing his citizenship claim and that U.S. Citizenship and Immigration Services (USCIS) is therefore barred from denying the claim. *Id.*

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 1954. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7) (1954),<sup>1</sup> is therefore applicable to this case.

Section 301(a)(7) of the former Act states, in pertinent part, 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

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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. Nevertheless, the substantive requirements of section 301(g) of the Act remained the same until the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655.

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

The applicant must thus establish that his mother was a U.S. citizen at the time of his birth, and that she was physically present in the United States for at least 10 years prior to 1954, five of which after 1941 (when his mother turned 14 years old).

At the outset, the AAO notes that the applicant must establish that his mother was born in the United States to support his claim that she obtained U.S. citizenship at birth. In this regard, the AAO notes that the record contains a delayed Texas birth certificate stating that the applicant's mother was born in Del Rio, Texas. This birth certificate was issued in 1978, when the applicant's mother was 51 years old. The record also contains a baptismal certificate indicating that the applicant was residing in Del Rio, Texas in 1927. There is also a 1927 contemporaneous birth record relating to the applicant's mother listing Ciudad Acuna, Mexico, as her place of birth.

The Board of Immigration Appeals held 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 maintains that the Immigration Judge's findings in his removal proceedings, and the testimony heard therein, bar the denial of his citizenship claim. *See* Applicant's Appeal Brief. The AAO first notes that the applicant has failed to submit any evidence or argument to overcome the finding by the director that his mother was not born in the United States in light of the contemporaneous Mexican birth record indicating that she was born in Mexico. The AAO must therefore find that the applicant's mother was not born in the United States and that the applicant did not acquire U.S. citizenship at birth.

U.S. Citizenship and Immigration Services (USCIS) is not bound by the immigration judge's finding regarding the applicant's U.S. citizenship status. Immigration Judges do not have jurisdiction or authority to declare that an alien is a U.S. citizen. Rather, the Immigration Judge's termination of removal proceedings against the applicant was based on the judge's determination that the U.S. Department of Homeland Security (previously the Immigration and Naturalization Service) had failed to meet its burden of proving the applicant's alienage and deportability by clear, convincing and unequivocal evidence. *See Woodby v. INS*, 385 U.S. 276, 286 (1966) (establishing this burden of proof); *Murphy v. INS*, 54 F.3d 605 (9<sup>th</sup> Cir. 1995) (holding that in deportation proceedings, the government must prove alienage by clear, unequivocal and convincing evidence); *see also Minasyan*

v. *Gonzalez*, 401 F.3d 1069 (9<sup>th</sup> Cir. 2005) (an immigration judge does not have authority to declare that an alien is a citizen of the United States; such jurisdiction rests with USCIS and with the federal courts). 8 C.F.R. § 341.3(c), specifies further that USCIS has jurisdiction over certificate of citizenship proceedings.

Counsel's reliance on *Medina v. INS*, 993 F.2d 499 (5<sup>th</sup> Cir. 1993) is misplaced. The adjudication of citizenship in *Medina* was in the context of an exclusion proceeding, where the applicant was admitted to the United States as a U.S. citizen. In this case, the Immigration Judge's termination of removal proceedings indicates no more than that the applicant's alienage was not established by clear and convincing evidence. The AAO notes further that the individual in *Medina* had obtained a U.S. passport, that his father's birth in the United States was clearly established, and that the only issue was his physical presence in the United States. In this case, there is contemporaneous evidence indicating that the applicant's mother was born in Mexico.

The AAO notes further that there is insufficient evidence to establish that she was physically present in the United States as is required by section 301(a)(7) of the Act. The applicant's mother's Mexican birth certificate indicates that she was born and lived in Mexico during her childhood. The applicant's mother married in Mexico in 1944 and gave birth to the applicant's older siblings in Mexico in 1945, 1946, 1948, 1950 and 1951. Finally, the AAO notes important, unresolved discrepancies in the testimony of the applicant's mother and other witnesses, such as the applicant's siblings' birth in Mexico in 1948-1951 and the applicant's mother's testimony that she was living with (and caring for) her uncle in the United States from 1948 to 1950.<sup>2</sup>

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and that 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). Even courts may not use their equitable powers to grant citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *Id.* at 883-84; *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).

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<sup>2</sup> In *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), the Board of Immigration Appeals held that "where 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."

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, and any doubts must be resolved against the applicant. 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 his burden. He has not established his mother’s birth and physical presence in the United States and therefore cannot establish that he acquired U.S. citizenship at birth. Therefore, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.