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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:

Office: HARLINGEN, TX

Date:

OCT 09 2009

IN RE:

Applicant:

APPLICATION:

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

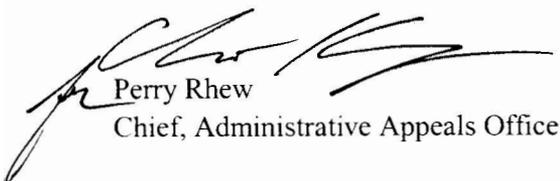
ON BEHALF OF APPLICANT:

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, 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, 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 December 26, 1980 in Mexico. The applicant's parents, as indicated in her birth certificate, are [REDACTED] and [REDACTED]. The applicant's father was born in Mexico on July 15, 1928 and acquired U.S. citizenship at birth through his father, the applicant's grandfather. The applicant's mother was a citizen of Mexico. The applicant's parents were married in Mexico in 1959. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father pursuant to section 301 of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1401.

The field office director concluded that the applicant had failed to establish that her father had the requisite period of physical presence in the United States to transmit citizenship under section 301 of the Act, 8 U.S.C. § 1401. The application was accordingly denied.

On appeal, the applicant submits an affidavit executed by her father as additional evidence in support of her citizenship claim. She maintains that he was physically present in the United States as required.

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. *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant in this case was born in 1980. Section 301(g) of the former Act was in effect at the time of the applicant's birth and is therefore applicable to her case.<sup>1</sup>

Section 301(g) of the former Act stated, 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 such citizen parent may be included in computing the physical presence requirements of this paragraph.

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<sup>1</sup> The AAO notes that the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046, re-designated section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), as section 301(g). The requirements of the new section 301(g) remained the same after the re-designation and until 1986.

In this case, the applicant must establish, by a preponderance of the evidence, that her U.S. citizen parent was physically present in the United States for at least 10 years prior to 1980, five of which after 1942 (when her father turned 14 years old).

The record contains the applicant's birth certificate, the applicant's father's certificate of citizenship (issued in 1966), the applicant's father's voter registration card (issued in 1975) and his selective service card (issued in 1967). The record also includes the applicant's father's affidavit (stating that he has been present in the United States since 1942) and an affidavit from [REDACTED] (stating that the applicant's father was present in the United States since 1967 when she met him). The affidavits further indicate that the applicant has eleven or twelve siblings. The AAO notes that the applicant's parents' marriage registration indicates they were married in Mexico in 1959. The AAO notes that the applicant's siblings' birth certificates are not included in the record. The record also contains several copies of receipts, dated in 1970-1979, purporting to be rent receipts for the applicant's father. The AAO notes, however, that the receipts are written in the Spanish language and do not indicate where the applicant's father was renting at the time. There is no other evidence in the record relating to the applicant's father's physical presence in the United States.

The AAO finds that the applicant has failed to establish, by a preponderance of the evidence, that her father was physically present in the United States for the required 10 years prior to 1980, five of which after 1942.

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and 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).

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 AAO finds that the applicant has failed to meet her burden of proof and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.