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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[redacted]

FILE: Office: DENVER, COLORADO Date: OCT 20 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:

[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).

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, Denver, Colorado, 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 11, 1956 in Mexico. The applicant's parents are and [redacted]. The applicant's parents were married in Mexico in 1940. The applicant claims that his mother was born in the United States in 1916. 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 district 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 application was accordingly denied.

On appeal, the applicant, through counsel, claims that his mother was indeed born in the United States. Counsel further maintains that the applicant's mother's Mexican birth registration, indicating that she was born in New Mexico, establishes her birth in the United States.

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 (9th Cir. 2000) (citations omitted). The applicant was born in 1956. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7) (1986),[1] 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 such citizen parent may be included in computing the physical presence requirements of this paragraph.

[1] 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.

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 1956, five of which after 1930 (when his mother turned 14 years old).

The AAO notes that the record does not contain any evidence of the applicant's mother's physical presence in the United States. Further, the applicant has not established that his mother was born in the United States. In this regard, the AAO notes that the record contains a delayed New Mexico birth certificate stating that the applicant's mother was born in New Mexico (registered when the applicant's mother was 70 years old), a Mexican birth registration indicating that the applicant's mother was born in New Mexico, and a copy of a civil registry record issued by the State of Chihuahua, Mexico, indicating that the applicant's mother was born in Casas Grandes, Chihuahua and registered in 1920.

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 has not provided any evidence or argument that would persuade the AAO to find that the applicant's mother was born in the United States in light of the official Chihuahua Civil Registry indicating that she was born in Mexico.[2] The AAO must therefore find that the applicant's mother was not born in the United States and that the applicant's did not acquire U.S. citizenship at birth. As previously noted, the record also does not contain evidence to establish the applicant's mother's required U.S. physical presence in the United States.

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. In order to meet this burden, the applicant must

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Counsel notes that the applicant's mother's purported U.S. citizenship was the basis for his and his relatives' immigration to the United States. The applicant thus appears to be arguing that he should gain U.S. citizenship by application of the doctrine of equitable estoppel. The AAO notes first that it is without authority to apply the doctrine of equitable estoppel in this or any other case. The AAO, like the Board of Immigration Appeals, is "without authority to apply the doctrine of equitable estoppel against the Service [USCIS] so as to preclude it from undertaking a lawful course of action that it is empowered to pursue by statute and regulation." *Matter of Hernandez-Puente,* 20 I&N Dec. 335, 338 (BIA 1991). The jurisdiction of the AAO is limited to that authority specifically granted through the regulations at Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 103.1(f)(3)(iii) (as in effect on Feb. 28, 2003) and subsequent amendments.

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.

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

The applicant's burden is to establish his eligibility for citizenship by a preponderance of the evidence, and any doubts must be resolved against the applicant. The applicant 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. The applicant in the present case has not met his burden. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.