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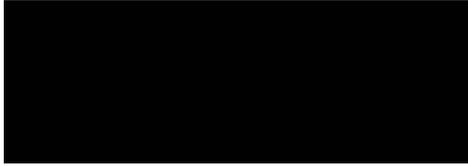
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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FILE: [REDACTED]

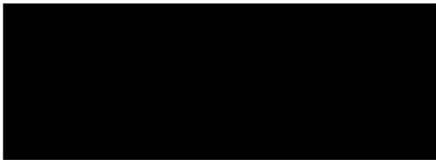
Office: EL PASO, TX

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IN RE: [REDACTED]

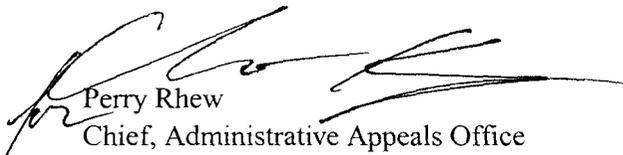
APPLICATION: Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401.

ON BEHALF OF APPLICANT:



**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.

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, El Paso, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant was born on April 22, 1956 in Mexico. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents were married in Mexico on April 7, 1947. The applicant's mother, a U.S. citizen, was born on May 8, 1928 in Arizona. The applicant seeks a certificate of citizenship claiming that she acquired citizenship at birth through her mother pursuant to section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401.

The field office director denied the applicant's citizenship claim, finding that she had failed to submit the requested evidence to establish her mother's physical presence in the United States for the required period. The application was accordingly denied.

On appeal, the applicant claims that the director erred in not granting her claim on the basis of the evidence she provided. See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The applicant notes that her brother's application for certificate of citizenship was granted. *Id.* The applicant indicates that a brief will be submitted to the AAO within 30 days. The AAO notes that no brief or additional documentation has been received by this office to date.

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 was born in 1956. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7)(1956), is therefore applicable to his citizenship claim.<sup>1</sup>

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 her mother was physically present in the United States for at least 10 years prior to the applicant's birth in 1956, five of which after her mother's 14<sup>th</sup> birthday in 1942.

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<sup>1</sup> 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.

The AAO notes that the record includes, in relevant part, the applicant's mother's birth certificate, her mother's baptismal certificate, the applicant's birth certificate, her parents' marriage certificate in 1947, the applicant's maternal aunt's birth and baptismal certificates (1930), the applicant's brother's birth and baptismal certificates (1955), a copy of a pay stub dated in 1943, a social security earnings statement evidencing employment income in 1943-1945 1953 and 1957, the applicant's mother's sworn statements as well as the statements of [REDACTED] and [REDACTED]. The applicant's mother indicates in her statement that she was present in the United States, in relevant part, from 1928 to 1932, from 1942 to 1947, from 1948 to 1950, from 1950 to 1956. The other statements submitted indicate that the applicant's mother was present in the United States from 1949 to 1956. The record thus establishes, by a preponderance of the evidence, that the applicant's mother's was present in the United States for 10 years prior to the applicant's birth, five of which after 1942 (her 14<sup>th</sup> birthday).

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). The regulations at 8 C.F.R. § 341.2(c) provide 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 thus finds that the applicant has met her burden of proof and the appeal will be sustained.

**ORDER:** The appeal is sustained.