

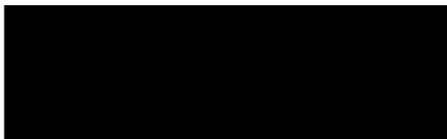
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: HARLINGEN, TX Date: OCT 26 2009

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under Section 301(a)(7) of the former Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7).

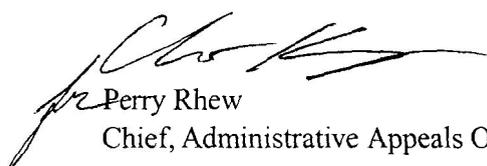
ON BEHALF OF APPLICANT:

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 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, 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 May 25, 1954 in Mexico. The applicant's parents, as indicated on his birth certificate, were [REDACTED] and [REDACTED]. The applicant claims that his mother was born in Texas on December 3, 1928. The applicant's parents were married in 1953 in Mexico. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother.

The field office director found that the applicant had failed to establish that his mother had the required 10 years of physical presence in the United States prior to his birth, and therefore concluded that he did not derive U.S. citizenship under section 301(a)(7) of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1954).¹

On appeal, the applicant maintains that he has established his mother's physical presence as required by the statute. *See Applicant's Appeal Statement.*

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

Section 301(a)(7) of the former Act states 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.

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), thus requires that the applicant establish that his mother was physically present in the United States for at least 10 years prior to 1954, five of

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. The substantive requirements of this provision remained the same until the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655.

which after 1942 (when his mother turned 14 years old). At the outset, however, the applicant must establish that his mother was a U.S. citizen at the time of his birth.

The AAO notes that the record contains a copy of a Mexican birth certificate filed on November 7, 1929 in Reynosa, Tamaulipas, Mexico for [REDACTED] the applicant's mother. The certificate indicates that the applicant's mother was born on December 3, 1928 at [REDACTED] in Reynosa, Tamaulipas and that her parents were [REDACTED] and [REDACTED]. The certificate further indicates that the birth was registered by the applicant's grandfather, [REDACTED].

The AAO further notes that the record contains the Mexican birth certificates of the applicant's mother's siblings, indicating their births in Reynosa, Tamaulipas, Mexico in 1934, 1937, 1943 and 1951.

The applicant submitted his mother's delayed Texas birth certificate and baptismal certificate in support of his claim that she was born in the United States. The AAO notes that the Texas birth certificate was issued in 1971, when the applicant's mother was 43 years old. In light of the contemporaneous Mexican birth registrations, the AAO cannot find that the applicant has established that his mother was born in the United States.

The AAO further 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 requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and United States 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 mother's place of birth by a preponderance of the evidence, and any doubts must be resolved against the applicant.² The applicant in the present case has not met his burden. Therefore, the appeal will be dismissed.

ORDER: The appeal is dismissed.

² Having found that the applicant failed to establish that his mother was a U.S. citizen at the time of his birth, the AAO does not reach the issue of whether she was physically present for the period required by section 301(a)(7) of the Act.