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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, TEXAS Date: OCT 29 2009

IN RE: [redacted]

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

ON BEHALF OF PETITIONER:

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 in Mexico on June 25, 1971. *See Birth Certificate for* The applicant's father was born in Mexico on January 20, 1939, and he obtained a U.S. Certificate of Citizenship on June 24, 1966. *See Certificate of Citizenship for* The applicant's mother was born in Mexico and is not a U.S. citizen. *See Marriage Certificate; Form N-600.* The record reflects that the applicant's parents were married at the time of her birth. *See Marriage Certificate* (indicating marriage in Mexico on February 3, 1963). The applicant seeks a certificate of citizenship pursuant to section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401, based on the claim that she acquired U.S. citizenship at birth through her father.

The Field Office Director found that the applicant failed to establish that her father was physically present in the United States for ten years prior to the applicant's birth, as required by former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7). *See Decision of the Field Office Director.* The application was denied accordingly. On appeal, the applicant contends through counsel that the applicable law only requires a showing that the applicant's father was physically present in the United States for five years prior to the applicant's birth. *See Notice of Appeal.* Further, the applicant states that she has provided sufficient evidence to support the requisite five years of physical presence. *Id.*

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 n.3 (9th Cir. 2001) (internal quotation marks and citation omitted). The applicant in this case was born in 1971. Accordingly, former section 301(a)(7) of the Act controls her claim to citizenship.

Section 301(a)(7) of the Act was re-designated as section 301(g) by the Act of October 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046 (1978). The requirements of section 301(a)(7) remained the same after the re-designation and until 1986. Contrary to counsel's claim on appeal, the five-year physical presence requirement in the current version of section 301(g) of the Act is inapplicable to this case.

Former section 301(a)(7) of the 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 . . . 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 . . . for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years. . .

8 U.S.C. § 1401(a)(7) (repealed). The applicant must therefore establish that her father was physically present in the United States for ten years before her birth in June 1971, and that at least five of these years were after her father's 14th birthday in January, 1953. *See id.*

The record contains the following evidence relating to the applicant's father's physical presence in the United States during the requisite time period: a Certificate of Citizenship for dated June 24, 1966; a Personal Earnings and Benefit Estimate Statement from the Social Security Administration showing earnings for beginning in 1967; and a letter from DIX Shipping Company, dated December 19, 2008, stating that has lived in Brownsville, Texas, since 1951, and that he worked for the company from 1966 until 1982.

During an interview with U.S. Citizenship and Immigration Services (USCIS) on this application, the applicant's father testified that he first entered the United States in 1950 or 1951, and that he resided in Brownsville, Texas, from that time until approximately 1987. *See Decision of the Field Office Director.* the uncle of testified that he met the applicant's father in 1951, and that has resided in the United States since the age of 12. *Id.*

The record also contains two sworn statements in affidavit form from the applicant's father, and one from the applicant's grandfather, . All three affidavits were executed in Texas before an immigration officer. On June 17, 1966, executed an affidavit stating,

> I was born on January 20, 1939 at El Chapote, Tamps., Mexico. I now reside at El Chapote, Tamps., Mexico and I have resided there all my life. I have never resided in the United States.

Form I-215A, Affidavit of dated June 17, 1966. On the same day, stated that he is the father of that that his son "resides at , and has never resided in the United States." *Form I-215A, Affidavit of* Conversely, on November 3, 2006, gave a sworn statement that he first came to the United States in 1950 or 1951, when he was about 12 years old. *See Form I-215 Affidavit of*

Here, the evidence in the record is insufficient to show that the applicant's father was physically present in the United States for ten years before the applicant's birth in 1971. First, the Certificate of Citizenship and the Personal Earnings and Benefit Estimate Statement for provides evidence that he was present in the United States from 1966 to 1971, a period of only six years. Second, although and his uncle testified that first entered the United States in 1950 or 1951, these statements contradict the sworn testimony given by and his father to immigration officials in 1966. Because the more recent witness testimony is contradicted by previous witness testimony, it is not sufficient to satisfy the applicant's burden of proof. *See Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969). Third, the brief letter from DIX Shipping Company provides insufficient detail and lacks supporting documentation to substantiate the statement that has lived in Texas since 1951, and has worked for the company from 1966 until 1982 in Brownsville and Corpus Christi, Texas. *Cf. Vera-Villegas v. INS*, 330 F.3d

1222, 1235 (9th Cir. 2003) (holding that the applicant met his burden of proving physical presence despite lack of contemporaneous documentation where he presented detailed testimony, three witnesses, and numerous affidavits); *Lopez Alvarado v. Ashcroft*, 381 F.3d 847, 854 (9th Cir. 2004) (finding that the applicants substantiated their physical presence in the United States through testimony by multiple employers, and letters from landlords, friends, family, and church members). Finally, counsel's claims and the DIS letter submitted on appeal do not resolve the inconsistencies in the record regarding the dates of the applicant's father's residence in the United States. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (holding that the burden lies on the petitioner to resolve any inconsistencies in the record).

A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 884 (1988). 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); *see also* 8 C.F.R. § 341.2(c) ("The burden of proof shall be upon 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 (Commr. 1989).

The applicant has failed to establish by a preponderance of the evidence that her father was physically present in the United States for ten years before the applicant's birth in 1971. Accordingly, the applicant is not eligible for citizenship under section 301(a)(7) of the former Act, and the appeal will be dismissed.

ORDER: The appeal is dismissed.