

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

E₂

FILE:

Office: HARLINGEN, TX

Date: **SEP 01 2009**

IN RE:

Applicant:

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:

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting 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 sustained.

The record reflects that the applicant was born on September 14, 1962 in Mexico. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's mother is a native-born U.S. citizen, born on October 4, 1940. The applicant's parents were married in 1960 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).¹

On appeal, the applicant, through counsel, maintains that he acquired U.S. citizenship at birth through his mother under section 301 of the Act, 8 U.S.C. § 1401. Specifically, the applicant claims that he has established his mother's physical presence as required by the statute. See Applicant's Appeal Brief.

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." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant was born in 1962. 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.

¹ Although the requirements of sections 301(a)(7) and 301(g) were the same until 1986, section 301(a)(7) of the former Act was not re-designated as section 301(g) until the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046.

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 1962, five of which after 1954 (when his mother turned 14 years old).

The record contains, in relevant part, the applicant's parents' marriage certificate, the applicant's mother's birth and baptism certificates, the applicant's mother's affidavit, a copy of the applicant's mother's elementary school records (indicating attendance from 1946-1951), the applicant's mother's high school records (1954-1958), documents relating to the applicant's maternal aunt, and documents relating to the applicant's maternal grandparents. The AAO notes that the record contains a copy of the applicant's maternal grandparents' deed for the purchase (in 1941) and sale (in 1968) of their home.

The record thus suggests that the applicant's mother was present in the United States for at least 10 years prior to 1962, five of which while after the age of 14. The AAO notes that there is no indication that the applicant's mother resided in Mexico at any time prior to her marriage in 1960. The record establishes, by a preponderance of the evidence, that the applicant's mother was present in the United States from birth through high school and until her marriage in Mexico. The AAO thus finds that the applicant has established that his mother was physically present in the United States as statutorily required.

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."

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 met his burden of proof and the appeal will be sustained.

ORDER: The appeal is sustained.