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U.S. Citizenship  
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Services



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FILE:



Office: RENO, NV

Date: SEP 03 2009

IN RE:



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.

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).

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, Reno, Nevada, 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 November 11, 1964 in Mexico. The applicant's parents, as indicated on her birth certificate, were [REDACTED] and [REDACTED]. The applicant's father was born in California on May 5, 1944 and he was a U.S. citizen. The applicant's parents were married in California in 1972. The applicant seeks a certificate of citizenship claiming that she acquired U.S. citizenship at birth through her father pursuant to section 301(a)(7) of the former Immigration and Nationality Act (the former Act), 8 U.S.C. § 1401(a)(7).

The field office director denied the applicant's citizenship claim finding that she had failed to provide sufficient evidence of her father's physical presence in the United States as required. This appeal followed.

On appeal, the applicant, through counsel, maintains that her father had the required physical presence in the United States and that the director erred in discrediting the sworn statements provided by her grandmother and uncle.

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 (9<sup>th</sup> Cir. 2000) (citations omitted). The applicant was born in 1964. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), is therefore applicable to her citizenship claim.<sup>1</sup>

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 her father was physically present in the United States for at least 10 years prior to November 11, 1964, five of which after May 5, 1958 (her father's 14<sup>th</sup> birthday).

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<sup>1</sup> The AAO notes that 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 evidence in the record includes the applicant's and her father's birth certificates, the applicant's father's 1947 baptismal certificate, the applicant's parents' marriage certificate, immigration documents relating to the applicant's mother, a copy of the applicant's father's social security card, affidavits executed by the applicant's grandmother and uncle, a social security earnings statement relating to the applicant's father evidencing employment income starting in 1965, and a social security earnings statement relating to the applicant's grandfather (listing employment income from 1951-1982). The AAO notes that the documentary evidence submitted regarding to the applicant's father relates to dates after the applicant's birth and is therefore irrelevant to her citizenship claim. The applicant's grandmother's affidavit states that the family resided in California from 1944 to 1950 and thereafter in Texas. Her second affidavit indicates that the applicant's father worked in El Paso, Texas until 1970. The applicant's uncle's affidavit indicates that the applicant's father worked and lived in Texas from 1959 to 1962. The AAO notes that the applicant's father's baptismal certificate indicates he was baptized in El Paso, Texas in 1947, which contradicts the applicant's grandmother's statement that the family resided in California from 1944 to 1950.

The AAO 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 evidence in the record does not support a finding that the applicant's father was physically present in the United States for 10 years prior to 1964, five of which after 1958. The affidavits submitted contradict other evidence in the record (namely, the baptismal certificate), and do not provide sufficient detail to support the claim that the applicant's father was present in the United States for the required period of time. The record does not contain any census, employment, housing, medical, immunization, or school records relating to the applicant's father before 1964.

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). 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 not met her burden of proof and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.