

DISCUSSION: The application was denied by the Field Office Director, Tucson, Arizona, 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 August 1, 1958 in Mexico. The applicant's parents, as indicated in his birth certificate, are [REDACTED] and [REDACTED]. The applicant's father, a U.S. citizen, was born in Arizona on February 26, 1928. The applicant's mother was a citizen of Mexico. The applicant's parents were married in Mexico in 1956. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father pursuant to section 301 of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1401.

The field office director concluded that the applicant had failed to establish that his father had the requisite period of physical presence in the United States to transmit citizenship under section 301 of the Act, 8 U.S.C. § 1401. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that the director erred in denying his claim. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The applicant notes that his father was present in the United States from birth (in 1928) for five years, in 1937 and each summer thereafter until 1954.

"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." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant in this case was born in 1958. Section 301(a)(7) of the former Act was in effect at the time of the applicant's birth and is therefore applicable to his case.¹

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 The AAO notes that the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046, re-designated section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), as section 301(g). The requirements of section 301(a)(7) remained the same after the re-designation and until 1986.

The requirements for citizenship, as set forth in the Act, are statutorily mandated by Congress, and CIS 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).

In this case, the applicant must establish, by a preponderance of the evidence, that his U.S. citizen parent was physically present in the United States for at least 10 years prior to 1958, five of which after 1942 (when his father turned 14 years old).

The record contains the applicant's birth certificate, the applicant's father's birth certificate, the applicant's father's siblings' birth and death certificates, and affidavits of family and friends. The record also includes the decision of the Immigration Judge finding that the Department of Homeland Security had failed to establish the applicant's alienage and the decision of the Board of Immigration Appeals affirming the Immigration Judge's findings.

The AAO notes that USCIS is not bound by the Immigration Judge's finding regarding the applicant's U.S. citizenship status because an Immigration Judge does not have jurisdiction or authority to declare that an alien is a U.S. citizen. *See Murphy v. INS*, 54 F.3d 605 (9th Cir. 1995) (holding that in deportation proceedings, the government must prove alienage by clear, unequivocal and convincing evidence); *see also Minasyan v. Gonzalez*, 401 F.3d 1069 (9th Cir. 2005) (clarifying further that an Immigration Judge does not have authority to declare that an alien is a citizen of the United States, and that such jurisdiction rests with USCIS).

Nevertheless, the AAO may consider the credible testimony heard by the Immigration Judge in determining an applicant's citizenship claim. The AAO has reviewed the transcript of the proceedings before the Immigration Judge and finds, based partly on the credible testimony of the applicant and his father, as well as on the evidence in the record, that the applicant has established that his father was present in the United States for 10 years, five of which while over the age of 14. Specifically, the AAO notes that the record establishes that the applicant's father was present in the United States from birth in 1928 and until 1931 given that his siblings were born in the United States in 1929 and 1931. The applicant's father's testimony in Immigration Court indicates that he was present in the United States for six months every year from 1937 to 1954. The affidavits submitted by the applicant corroborate the applicant's father's account. *See Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969) (holding that "where a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily").

The AAO thus finds that the applicant has established, by a preponderance of the evidence, that his father was physically present in the United States for the required 10 years prior to 1958, five of which after 1942

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.