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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



**U.S. Citizenship  
and Immigration  
Services**

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[REDACTED]

FILE:

[REDACTED]

Office: WASHINGTON, DC Date:

APR 02 2010

IN RE:

[REDACTED]

APPLICATION: Application for Certificate of Citizenship under former section 301(a)(7) of the Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7) (1957).

ON BEHALF OF APPLICANT:

[REDACTED]

**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, Washington, D.C., 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 7, 1957 in Yemen. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's father derived U.S. citizenship on July 20, 1949, from his father, the applicant's grandfather. The applicant claims that she acquired U.S. citizenship at birth through her father.

The field office director denied the applicant's claim upon finding that she had failed to establish that her father had the physical presence in the United States required by section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401.

On appeal, the applicant, through counsel, maintains that she has provided sufficient evidence to establish that her father was present in the United States since approximately 1947. *See Applicant's Appeal Brief.* The applicant notes that school records confirm that her father was present in the United States since 1951 and that, although his acquisition of U.S. citizenship was in 1949, a statement by a cousin confirms that her father was in the United States since the "mid 1940s." *Id.*

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 on 1957. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7)(1957), therefore applies to this case.<sup>1</sup>

Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7), provided 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.

The applicant must thus establish that her father was physically present in the United States for 10 years prior to 1957, five of which after attaining the age of 14 (in 1945).

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<sup>1</sup> The director incorrectly cited to section 301(g). 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.

The applicant has not established that her father was physically present in the United States for 10 years prior to 1957. The school records submitted date back to 1951 and contain one handwritten notation that the applicant's father arrived in the United States in 1949. On the Form N-600, Application for Certificate of Citizenship, the applicant stated that her father began to reside in the United States in 1951. The record does not support the applicant's father's cousin's statement that the applicant's father was present in the United States since the "mid 1940's." The applicant's father's cousin arrived in the United States in 1956 and consequently has no personal knowledge of the applicant's father's presence in the United States prior to 1956. See Statement of [REDACTED]. Moreover, the applicant's father derived U.S. citizenship in July 1949, not at birth or upon his father's (the applicant's grandfather's) naturalization in 1944. The record therefore at best establishes that the applicant's father was present in the United States as of 1949.

The regulation at 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 record does not establish, by a preponderance of the evidence, that the applicant's father was present in the United States for 10 years prior to the applicant's birth in 1957. The applicant in the present case therefore has not met her burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.