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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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APR 27 2010

FILE: [Redacted] Office: EL PASO, TX Date:

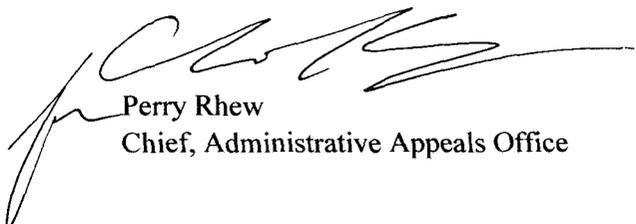
IN RE: Applicant: [Redacted]

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) (1969).

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.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, El Paso, 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 August 11, 1969 in Mexico. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's father was born in New Mexico on September 20, 1928. The applicant's parents were married in Texas in 1968. The applicant seeks a certificate of citizenship pursuant to former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7)(1969), based on the claim that she acquired U.S. citizenship at birth through her father.

The field office director denied the applicant's citizenship claim upon finding that the applicant had failed to submit evidence of her father's U.S. physical presence. On appeal, the applicant submits additional evidence in support of her citizenship claim.

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, 1028 n.3 (9th Cir. 2000) (internal citation omitted). The applicant in this case was born in 1969. Former section 301(a)(7) of the Act, as in effect in 1969, is applicable to this case.¹

Former section 301(a)(7) of the Act provided that:

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 [shall be a citizen of the United States].

In order to acquire U.S. citizenship under this provision, the applicant must establish that her father was present in the United States for a period of 10 years prior to 1969, at least five of which were after he attained the age of 14 (in 1942).

The record in this case contains, in relevant part, the applicant's birth certificate, the applicant's father's birth certificate, copies of the applicant's siblings' citizenship certificates, a copy of the immigration file of one of the applicant's siblings, and the applicant's father's social security earnings statement indicating continuous employment from 1951 to 1969.

The documents submitted establish, by a preponderance of the evidence, that the applicant's father was physically present in the United States for 10 years prior to 1969, five of which were after 1942.

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 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). 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. The applicant in the present case has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained.