



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

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FILE: [REDACTED] Office: JACKSONVILLE, FL Date: APR 27 2010

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) (1972).

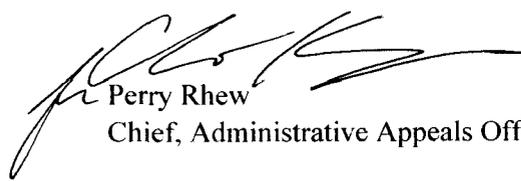
ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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, Jacksonville, Florida, 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 January 12, 1972 in Mexico. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents were married in Mexico in 1961. The applicant's father was born in Texas in 1930. The applicant's mother became a U.S. citizen upon her naturalization in 2007. 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 provide any evidence of her father's physical presence in the United States as required by former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1972).

On appeal, the applicant states that she will be submitting additional evidence of her father's physical presence. The record contains a letter signed by [REDACTED] stating that she knew the applicant's father from 1992 until his death in 1996. She further states that the applicant's father departed the United States during World War II and then returned two years later. The record also contains a copy of the applicant's father's death certificate, copies of his driver's licenses, Medicare and Social Security card, and an employment verification letter.

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" *See Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2000) (internal citation omitted). The applicant was born on 1972. Former section 301(a)(7) of the Act is therefore applicable to this case.

Former section 301(a)(7) of the Act 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 1972, five of which after attaining the age of 14 (in 1944).

The record does not establish that the applicant's father was present in the United States for 10 years prior to 1972, the year of the applicant's birth. In this regard, the AAO notes that the letter from [REDACTED] states that she knew the applicant's father from 1992 to 1996. Her statements regarding the

applicant's father's previous residence in the United States are not based on personal knowledge. The other documentation submitted relates to dates after the applicant's birth, and is therefore irrelevant to the question of the applicant's father's residence prior to 1972.

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 applicant in the present case has not submitted relevant, probative and credible evidence to establish that her father had the required physical presence in the United States. She therefore has not met her burden of proof and the appeal will be dismissed.

ORDER: The appeal is dismissed.