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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: HARLINGEN, TX

Date:

APR 27 2010

IN RE:



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) (1955).

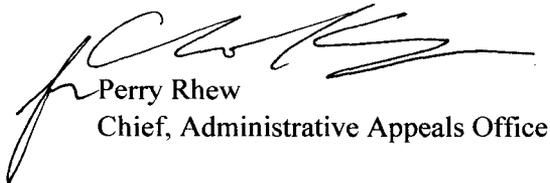
ON BEHALF OF APPLICANT:

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, 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, Harlingen, Texas, 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 March 11, 1955 in Mexico. The applicant's father, [REDACTED] was born in the United States on December 19, 1912. The applicant's mother, [REDACTED] became a U.S. citizen upon her naturalization in 1996. The applicant's parents were married in Texas in 1952. 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) (1955), based on the claim that he acquired U.S. citizenship at birth through his father.

The field office director denied the applicant's citizenship claim upon finding that the applicant had failed to establish that his father had the physical presence required under former section 301(a)(7) of the Act. On appeal, the applicant states that he wants to be a U.S. citizen. *See* Statement of Applicant on Form I-290B, Notice of Appeal to the AAO. The applicant indicates that additional evidence or a brief would be submitted to the AAO within 30 days. *Id.* To date, the AAO has not received any additional evidence or brief.

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 1955. Former section 301(a)(7) of the Act, as in effect in 1955, is applicable to his 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 his father was present in the United States for a period of ten years prior to 1955, at least five of which were after he attained the age of 14 (in 1926).

The record in this case contains, in relevant part, the applicant's birth certificate; the applicant's father's birth, baptismal and death certificates; the applicant's parents' marriage certificate; the applicant's mother's naturalization certificate; and copies of the applicant's siblings' birth certificates (indicating they were born in Texas in 1950 and 1951).

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 record does not establish, by a preponderance of the evidence, that the applicant's father was physically present in the United States for 10 years prior to 1955, five of which were after 1926. The documents in the record, at best, suggest that the applicant's father was present in the United States from 1950 to 1952.

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. 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 met his burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.