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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**

E<sub>2</sub>

FILE: [REDACTED] Office: HOUSTON, TX 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) (1961).

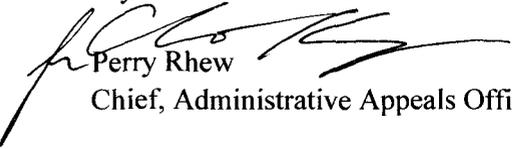
ON BEHALF OF APPLICANT:

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 District Director, Houston, 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 January 10, 1961 in Mexico. The applicant's parents are [REDACTED] and [REDACTED]. The applicant's parents were married in Mexico in 1959. The applicant's father was born in Mexico in 1923, but acquired U.S. citizenship at birth through a U.S. citizen parent. The applicant's mother became a U.S. citizen upon her naturalization in 1993. The applicant claims that he acquired U.S. citizenship at birth through his father.

The district director denied the applicant's claim upon finding that he had failed to provide any evidence of his 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) (1961). On appeal, the applicant again submits a copy of his father's certificate of citizenship and social security earnings statement, and a copy of his mother's certificate of naturalization.

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 (9<sup>th</sup> Cir. 2000) (internal citation omitted). The applicant was born in 1961. 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 his father was physically present in the United States for 10 years prior to 1961, five of which after attaining the age of 14 (in 1937).

The record does not establish that the applicant's father was present in the United States for 10 years prior to 1961, the year of the applicant's birth. In this regard, the AAO notes that the social security earnings record indicates that the applicant's father was employed in the United States in 1957. The other information in the earnings record relates to periods in 1974 and thereafter, and therefore is irrelevant to the applicant's father's presence in the United States prior to the applicant's birth. No other relevant documentation was submitted to establish that the applicant's father was present in the United States before 1961. The AAO notes that the applicant's father's certificate of citizenship was issued in 1964 (and indicates that he was residing in Mexico at the time). The applicant therefore has

not established that his father was physically present in the United States as required by former section 301(a)(7) of the Act.<sup>1</sup>

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 submitted evidence of his father’s physical presence in the United States for only one of the requisite 10 years. He therefore has not met his burden of proof and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> The applicant also cannot derive U.S. citizenship through his mother because her naturalization occurred after the applicant’s eighteenth birthday. *See* former section 321 of the Act, 8 U.S.C. § 1432 (1961).