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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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[Redacted]

FILE: [Redacted] Office: NEW ORLEANS, LA Date: **AUG 03 2010**

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Former Section 301 of the Immigration and Nationality Act, 8 U.S.C. § 1401 (1970).

ON BEHALF OF APPLICANT:

[Redacted]

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, New Orleans, Louisiana, 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 July 29, 1970 in Mexico. The applicant's father, [REDACTED], was born on January 25, 1926 in Texas. The applicant's mother, [REDACTED] is not a U.S. citizen. The applicant's parents were married in Mexico in 1967. The applicant seeks a certificate of citizenship claiming 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's father was not physically present in the United States as required by former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7) (1970). The application was accordingly denied.

On appeal, the applicant, through counsel, states that the applicant's father was physically present in the United States, in relevant part, from birth until 1931, in 1948, in 1951 and from 1966 to 1970. See Appeal Brief. According to the applicant, the director failed to consider all the evidence submitted in support of his citizenship claim. *Id.* The applicant maintains that he acquired U.S. citizenship at birth from his father pursuant to former section 301(a)(7) of the Act.

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 (9<sup>th</sup> Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1970. Former section 301(a)(7) of the Act therefore applies to the present case.<sup>1</sup>

Former section 301(a)(7) of the Act stated, in pertinent part, 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 1970, five of which were after he reached the age of 14 (after 1940). The record

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<sup>1</sup> Section 301(a)(7) of the former Act was re-designated as section 301(g) upon enactment of the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. The substantive requirements of this provision remained the same until the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655.

contains the following evidence relevant to the applicant's father's presence in the United States prior to 1970:

- 1) the applicant's father's birth and baptismal certificates, indicating he was in the United States in 1926;
- 2) the applicant's parents' marriage certificate, indicating they were married in Mexico in 1967;
- 3) the applicant's father's earnings statement listing employment income from 1966 through 1970;
- 4) the applicant's father's selective service registration, dated in 1966;
- 5) the applicant's father's application for a social security number, dated in 1966;
- 6) the applicant's father's voter registration, dated in 1968
- 7) the applicant's father's resident citizen identification card, dated in 1968;
- 8) the affidavit of the applicant's father, indicating he was in the United States in 1948, in 1951 and since 1966;
- 9) the notarized statement of the applicant's paternal grandmother, dated in 1968, indicating the applicant's father was in the United States from birth until 1931; and
- 10) the notarized statement of the applicant's father's friends [REDACTED] and [REDACTED] [REDACTED] noting that the applicant's father was in the United States starting in 1964 and in 1958 and 1951, respectively.

The relevant evidence in the record does not establish that the applicant's father was physically present in the United States for the requisite period. The applicant has established that his father was in the United States at birth and likely until 1931, and after 1966. The notarized statement of [REDACTED] [REDACTED] provides no further, probative or detailed information regarding the applicant's father's claim that he was present in the United States in 1948 and in 1951. The applicant's father's statements in this regard are generalized and do not indicate the period of time he spent in the United States either in 1948 or in 1951. Moreover, the record indicates that the applicant's father spent some time in Mexico in 1967, as evidenced by his marriage certificate. The applicant has failed to establish by a preponderance of the evidence that his father resided in the United States for at least 10 years prior to 1970, five of which were after 1940. Thus, the applicant did not acquire U.S. citizenship at birth through his father.

"There 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 applicant bears the burden of proof in these proceedings to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2(c). The applicant has not met his burden of proof, and his appeal will be dismissed.

**ORDER:** The appeal is dismissed.