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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

[REDACTED]

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FILE: [REDACTED] Office: HARLINGEN, TX Date: **AUG 04 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 (1968).

ON BEHALF OF APPLICANT:

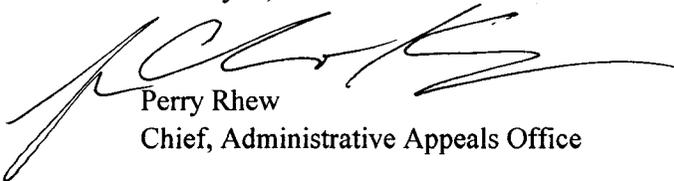
[REDACTED]

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, 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 [REDACTED] in Mexico. The applicant's parents, as indicated in his birth certificate, are [REDACTED]. The applicant's father was born in Mexico on [REDACTED], but acquired U.S. citizenship at birth through his U.S. citizen parent. The applicant's parents were married in 1967 in Mexico. The applicant seeks a certificate of citizenship pursuant to former section 301 of the Immigration and Naturalization Act (the Act), 8 U.S.C. § 1401, claiming that he acquired U.S. citizenship at birth through his father.

The field office director found that the applicant had failed to demonstrate that his father had the required period of physical presence in the United States to transmit U.S. citizenship to the applicant. Specifically, the director noted the applicant's father's statement in his immigrant visa records indicating that he had resided in Mexico from 1957 to 1973. The application was accordingly denied.

On appeal, the applicant, through counsel, maintains that his father was physically present in the United States as required by former section 301 of the Act. *See Applicant's Appeal Brief*. The applicant states that his father spent at least 10 and a half years in the United States prior to 1968, five of which were after his fourteenth birthday (in 1955). *Id.*

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 the present matter was born in 1968. Former section 301(a)(7) of the Act therefore applies to the present case.¹

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.

¹ Former section 301(a)(7) of the 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 the section remained the same until the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655.

The applicant must thus establish that his father was physically present in the United States for ten years prior to 1968, five of which while over the age of 14 (after 1955).

The record contains, in relevant part, a copy of the applicant's birth certificate; his father's certificate of citizenship; his parents' marriage certificate; his father's vaccination record, social security and border crossing card; a police report indicating the applicant's father's 1976 arrest in Texas; and affidavits executed by his father, family and acquaintances. The affidavits indicate that the applicant's father began traveling to the United States in 1951 and worked in a variety of occupations in Texas and in California in the late 1950s and 1960s. The record also contains a copy of the applicant's father's immigrant visa application, on which he indicated that he resided in Mexico from 1957 to 1973.

The applicant has failed to establish by a preponderance of the evidence that his father was physically present in the United States for 10 years prior to 1968, five of which while he was over the age of 14 (after 1955). On his immigrant visa application dated March 5, 1973, the applicant's father stated that he had resided in Mexico from 1957 to 1973. On appeal, counsel states that the applicant's father listed his Mexico address on the immigrant visa form because he did not have a permanent address in the United States. Counsel submits no evidence, such as a statement from the applicant or his father, to support this explanation. The unsupported assertions of counsel do not constitute evidence and cannot satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The Board of Immigration Appeals held in *Matter of Tijerina-Villarreal*, 13 I&N Dec. 327, 331 (BIA 1969), that:

[W]here a claim of derivative citizenship has reasonable support, it cannot be rejected arbitrarily. However, when good reasons appear for rejecting such a claim such as the interest of witnesses and important discrepancies, then the special inquiry officer need not accept the evidence proffered by the claimant. (Citations omitted.)

The record in this case contains a significant, unresolved discrepancy regarding the physical presence of the applicant's father in the United States from 1957 until the applicant's birth in 1968. The contemporaneous information in the applicant's father's immigrant visa application directly conflicts with the statements made in the affidavits submitted in support of the applicant's claim. While the applicant's father provided a detailed account of his residence and employment in the United States and Mexico before the applicant's birth, he does not acknowledge the discrepancy between his statements and his immigrant visa application. The affidavits of the applicant's father's relatives and employers generally indicate that the applicant's father worked in temporary, seasonal jobs in the United States during the relevant time period, but they do not provide detailed and substantive information sufficient to resolve the discrepancy regarding the applicant's father's physical presence from 1957 to 1968. The applicant has submitted no new evidence on appeal to

address the discrepancy. In light of this unresolved inconsistency in the record, the applicant has not established that his father was physically present in the United States as claimed.

“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 burden in these proceedings is on the applicant to establish his father’s physical presence in the United States by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2. The applicant has failed to meet his burden of proof and his appeal will be dismissed.

ORDER: The appeal is dismissed.