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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:

Date: **AUG 18 2010**

IN RE:

Applicant:

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) (1966).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the District Director, San Diego, California, 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 August 14, 1966 in Mexico. The applicant's parents, as indicated in his birth certificate, are [REDACTED] and [REDACTED]. The applicant's mother was born in Colorado in 1926. The applicant's parents were married in Mexico in 1943. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother.

The district director found that the applicant had failed to establish that his mother had the required ten years of physical presence in the United States prior to the applicant's birth, five of which while after attaining the age of 14. The field office director therefore concluded that the applicant did not acquire U.S. citizenship at birth through his mother.

On appeal, the applicant notes that his older sisters' certificate of citizenship applications were approved based on the same facts and evidence. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. The applicant maintains that he acquired U.S. citizenship at birth through his mother. *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. 2001) (internal citation omitted). The applicant in the present matter was born in 1966. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7) (1966), 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 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.

The applicant must thus establish that his mother was physically present in the United States for ten years prior to 1966, five of which while after the age of 14 (after 1940).

The record contains a copy of the applicant's mother's birth certificate indicating that she was born in Colorado in 1926. The record also includes the applicant's parents' marriage certificate indicating that they were married in Mexico in 1943. The record includes a copy of a [REDACTED] Alien Relative, filed by the applicant's mother on her eldest daughter's behalf stating that she had resided in Mexico from 1943 to 1969. The applicant's sisters' applications for certificates of citizenship (Form N-600) are also in the record.

Based on a careful review of the documents in the applicant's file, the AAO finds that the applicant has not established that his mother was physically present in the United States for the requisite period. The record shows that the applicant's mother was residing in Mexico from 1943 to 1969. She consequently was not physically present in the United States for five years after 1940 (when she turned 14) and before the applicant's birth in 1966.

The applicant's sisters' applications are not evidence of the applicant's eligibility. The files of the applicant's two elder sisters contain no evidence of their mother's presence in the United States for the requisite periods. To the contrary, the file of the applicant's eldest sister contains the Form I-130 signed by the applicant's mother on September 18, 1969, on which she stated that she had resided in Mexico from 1943 to 1969. Pursuant to the regulations, an application for a certificate of citizenship "shall be supported by documentary or other evidence essential to establish the claimed citizenship." 8 C.F.R. § 341.1. The burden is on the applicant to establish eligibility for U.S. citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 CFR § 341.2.

The applicant in this case has not met his burden of proof to establish that his mother was physically present in the United States for ten years prior to 1966, five of which after 1940. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.