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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

E₂

[Redacted]

FILE:

[Redacted]

Office:

[Redacted]

Date: **AUG 26 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 (1960)

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

[Redacted Signature]

Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Field Office Director, Santa Ana, 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 July 2, 1960 in Mexico. The applicant's parents, as indicated on his birth certificate, are [REDACTED] and [REDACTED]. The applicant's parents were married in Mexico in 1943. The applicant's father was born in California on February 20, 1921. 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 had failed to establish that his father had the period of physical presence in the United States required by former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1407(a)(7) (1960). The director noted that the applicant's father's social security earnings statement did not list any employment income for the years prior to the applicant's birth and that the applicant's siblings were all born in Mexico from 1944 to 1962. The application was accordingly denied.

On appeal, the applicant, through counsel, states that the applicant's father was physically present in the United States as required. Counsel maintains that the director failed to consider all the relevant evidence. *See Appeal Brief.* Counsel notes that the applicant provided, in relevant part, notarized statements and photographs that indicate that the applicant's father was physically present in the United States as claimed. *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). The applicant in the present matter was born in 1960. 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

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.

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 1960, five of which were after the age of 14 (after 1935), as required under former section 301(a)(7) of the Act. The record contains a copy of the applicant's father's birth certificate (indicating that he was born in California in 1921), a copy of the applicant's paternal uncles' birth certificates (indicating that they were born in California in 1926 and 1928), school records (indicating the applicant's father was present in the United States in 1930-1932), a social security earnings statement (indicating \$138.20 of income in 1952, but no further income until 1965), and census records (indicating that the applicant's father was present in the United States prior to 1930). The record also includes photographs of the applicant's father purportedly taken in California in 1955. Additionally, the record contains an affidavit signed by the applicant, as well as letters signed by his family members. Finally, the record includes the applicant's parents' marriage certificate (indicating they were married in Mexico in 1943) and documentation relating to his siblings (indicating that they were all born in Mexico from 1944 to 1962).

The applicant submits a declaration stating that his father was born in California in 1921, resided in the United States until 1932, and returned to the United States in 1944. [REDACTED] siblings state that the applicant's father moved to Mexico when he was 11 years old (in 1932), [REDACTED], and returned to the United States in 1945. *See* Declarations of [REDACTED] and letters of [REDACTED]. The applicant's oldest [REDACTED] also states that his father lived in the United States until 1932. [REDACTED] letter does not specify when his father returned to the United States, but states that he remembers his father's "occasional" visits to Mexico. [REDACTED] Although consistent, the [REDACTED] and letters submitted by the applicant do not provide sufficient detail or have probative value in light of his siblings' births in [REDACTED]. The record establishes that the applicant's father was in the United States from birth until 1932, but, in light of the applicant's father's social security earnings statement, his parents' marriage in 1943 and his siblings' births in Mexico, the record does not demonstrate that the applicant's father was present in the United States for five years between 1935 and 1960. The applicant has failed to establish that his father had the physical presence required to transmit U.S. citizenship under former section 301(a)(7) of the Act.

The burden in these proceedings 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. The appeal will therefore be dismissed.

ORDER: The appeal is dismissed.