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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>

[Redacted]

FILE: [Redacted] Office: HOUSTON, TX Date: DEC 01 2010

IN RE: Applicant: [Redacted]

APPLICATION: Application for Certificate of Citizenship under Section 301 of the Immigration and Nationality Act, 8 U.S.C. § 1401 (1958)

ON BEHALF OF APPLICANT:

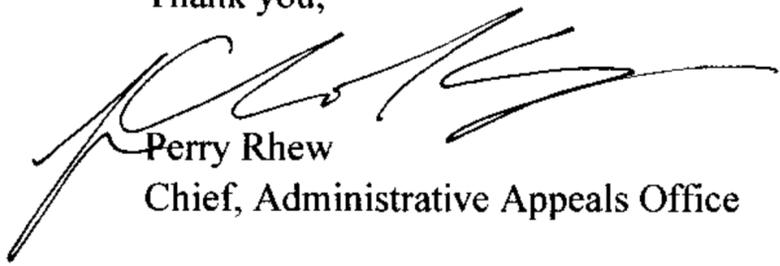
[Redacted]

**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 \$630. 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, 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 March 18, 1958 in Mexico. The applicant's parents are [REDACTED]. The applicant's parents were married in Texas in 1970. The applicant's father was born in Mexico on November 17, 1934, 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 1997, after the applicant's eighteenth birthday. 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 had not been physically present in the United States as required by former section 301 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401 (1958). The director noted that the applicant's father had submitted a sworn statement in 1972, indicating that he did not reside in the United States until 1968.

On appeal, the applicant, through counsel, states that the applicant's father did not make a statement in 1972 indicating that he began residing in the United States in 1968. *See* Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO. Alternatively, he maintains that the applicant's father did not understand English or that the field office director erred in interpreting the applicant's father's statement as an indication that he was not physically present in the United States. *Id.* Counsel indicated on the Form I-290B that additional evidence or a brief would be submitted to the AAO within 30 days of filing of the appeal, but no such evidence or brief has been submitted to date.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicant has failed to establish his eligibility for citizenship and the appeal will be dismissed for the reasons discussed below.

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 1958. 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

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<sup>1</sup> 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 this provision remained the same until the enactment of the Act of November 14, 1986, Pub. L. 99-653, 100 Stat. 3655.

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 1958, five of which were after the age of 14 (after 1948).

The record contains, in relevant part, a copy of a sworn statement given by the applicant's father in 1972 indicating that he did not reside in the United States until 1968. The record also contains the applicant's birth certificate, his parents' marriage certificate, his father's certificate of citizenship, his paternal uncle's birth certificate (indicating he was born in the United States in 1927), and affidavits executed by the applicant's parents and uncle.

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 AAO notes that the information in the affidavits submitted in support of the application directly contradicts the sworn statement given by the applicant's father in 1972. In 2010, the applicant's father, mother and uncle, state that the applicant's father resided in the United States with his mother since he was a young child. In 1972, however, the applicant's father stated that he did not reside in the United States until 1968. The AAO notes that the applicant's parents' marriage certificate is the only documentary evidence of physical presence, and that it indicates that the applicant's father was physically present in the United States in 1970. The applicant's father's certificate of citizenship was issued in 1970. In light of the direct contradiction in testimony in the record, the lack of any supporting evidence resolving this inconsistency, and the contemporaneous nature of the 1972 sworn statement, the AAO finds that the record does not establish that the applicant's 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.