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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: HARLINGEN, TEXAS Date: DEC 02 2010

IN RE: [REDACTED]

APPLICATION: Application for Certificate of Citizenship under former section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (1954)

ON BEHALF OF PETITIONER:

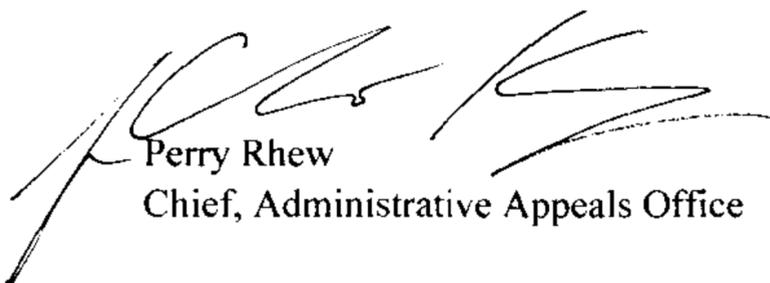
[REDACTED]

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 for Certificate of Citizenship (Form N-600) was denied, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The Field Office Director, Harlingen, Texas, treated the applicant's second Form N-600 as a motion to reopen, and denied the motion. The matter is now before the AAO on appeal. The appeal will be dismissed.

The record reflects that the applicant was born in Mexico on February 11, 1954, to married parents [REDACTED]. The applicant's mother was born in the United States on July 25, 1916. The applicant's father was born in Mexico and was not a U.S. citizen at the time of the applicant's birth. The applicant seeks a certificate of citizenship pursuant to former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7), based on the claim that he acquired U.S. citizenship at birth through his mother.

The director determined that the applicant failed to submit any new evidence to establish that his mother was physically present in the United States for the requisite period prior to the applicant's birth, as required by former section 301(a)(7) of the Act. *See Decision of the Director*, dated Apr. 29, 2010. Specifically, the director determined that the five affidavits submitted in support of the motion were previously submitted to U.S. Citizenship and Immigration Services (USCIS) in support of the applicant's appeal to the AAO. *Id.* The motion was denied accordingly. *Id.* On appeal, the applicant contends through counsel that the director erred in failing to consider all of the evidence in the record. *See Form I-290B, Notice of Appeal*, filed June 2, 2010. The applicant further contends that the evidence relating to the grant of a certificate of citizenship to his brother shows that his mother met the applicable physical presence requirements. *Id.*; *see also Brief on Appeal*.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A motion to reopen a decision made by USCIS must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider a decision must state the reasons for reconsideration, and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider also must establish that the decision was incorrect based on the evidence of record at the time of the initial decision. *Id.* A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The applicant's second Form N-600 did not state any new facts to be proved and is not supported by affidavits or other documentary evidence not already in the record.¹ Accordingly, the Form N-600 does not meet the requirements for a motion to reopen, and it will be treated as a motion to reconsider. 8 C.F.R. § 103.5(a)(2), (a)(3).

The applicant contends that USCIS failed to consider all of the evidence in the record. Here, the director and the AAO considered the probative value of the five affidavits submitted in support of the applicant's Form N-600. *See Decision of the Director* at 1-2; *Decision of the AAO*, dated Feb. 26, 2007, at 2-4. Further, the AAO reviewed the evidence in the record regarding the applicant's

¹ Although counsel claims that the applicant submitted an affidavit from his mother in support of his application, *see Brief on Appeal* at 2, the record does not contain an affidavit from [REDACTED]

brother's application for, and receipt of, a certificate of citizenship. *See Decision of the AAO* at 2. Accordingly, this contention lacks merit.

The applicant further contends that the grant of a certificate of citizenship to his brother shows that the applicant also has met his burden of showing that his mother met the physical presence requirements set forth in former section 301(a)(7) of the Act. *Brief on Appeal*. at 3-4.² Here, USCIS conducted a thorough review of the applicant's file and discussed in detail why the summary affidavits from the applicant's mother's family members are insufficient to establish by a preponderance of the evidence that the applicant's mother resided in the United States from 1916 until 1952. *See Decision of the AAO* at 3-4; *cf. Vera-Villegas v. INS*, 330 F.3d 1222, 1235 (9th Cir. 2003) (holding that the applicant met his burden of proving physical presence despite lack of contemporaneous documentation where he presented detailed testimony, three witnesses, and numerous affidavits); *Lopez Alvarado v. Ashcroft*, 381 F.3d 847, 854 (9th Cir. 2004) (finding that the applicants substantiated their physical presence in the United States through testimony by multiple employers, and letters from landlords, friends, family, and church members). The applicant has now had two opportunities to supplement the record with more detailed affidavits and additional evidence regarding his mother's physical presence in the United States. No additional evidence has been submitted, nor has the applicant explained any specific difficulties with gathering more detailed documentation. Accordingly, the applicant has not established that USCIS incorrectly applied the law or USCIS policy in denying his motion to reconsider. 8 C.F.R. § 103.5(a)(3).

The applicant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. Section 341 of the Act, 8 U.S.C. § 1452; 8 C.F.R. § 341.2(c). Here, the applicant has failed to establish by a preponderance of the evidence that he is eligible for citizenship under former section 301(a)(7) of the Act. The appeal will be dismissed.

ORDER: The appeal is dismissed.

² Although the applicant claims that the affidavits filed in support of his application for a certificate of citizenship are identical to the affidavits filed in support of his brother's application, a review of applicant's brother's file shows that only three of the five affidavits are identical.