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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: [REDACTED] Office: HARLINGEN, TX

Date: DEC 15 2010

IN RE: Applicant: [REDACTED]

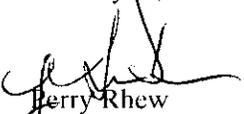
APPLICATION: Application for Certificate of Citizenship under Former Section 301 of the
Immigration and Nationality Act, 8 U.S.C. § 1401 (1980)

ON BEHALF OF APPLICANT:

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.

Thank you,


Jerry 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 sustained.

The record reflects that the applicant was born on October 22, 1980 in Mexico. The applicant's mother, [REDACTED], was born in Mexico on September 24, 1960 but acquired U.S. citizenship at birth through a U.S. citizen parent. The applicant's father is not a U.S. citizen. The applicant's parents were married in Houston, Texas in 1977. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his mother.

The field office director denied the applicant's citizenship claim upon finding that the applicant's mother 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 (1980).¹

On appeal, the applicant, through counsel, states that any slight variations in the testimony offered in support of his claim are due to the passage of time. See Supplement to Notice of Appeal. The applicant maintains that his mother first came to the United States in 1969 and had the required physical presence in the United States prior to his birth in 1980. *Id.*

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The applicant has established his eligibility for citizenship and the appeal will be sustained 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 (9th Cir. 2001) (internal citation omitted). The applicant in the present matter was born in 1980. Former section 301(g) of the Act, 8 U.S.C. § 1401(g) (1980), therefore applies to the present case.

Former section 301(g) 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 The director mistakenly referred to former section 301(a)(7) of the Act. Former section 301(g) of the Act was designated as such upon enactment of the Act of October 10, 1978, Pub. L. 95-432, 92 Stat. 1046. It was originally enacted in 1952 as section 301(a)(7) of the Act. 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 10 years prior to 1980, five of which were after she reached the age of 14 (after 1974). The record contains, in relevant part, notarized statements submitted by the applicant's mother, his mother's siblings, other family members, co-workers and acquaintances. The record also contains the applicant's parents' marriage certificate, evidencing their marriage in Houston, Texas in 1977, and the applicant's brother's baptism and immunization records, evidencing his birth in Texas in 1978. The record further includes documentation relating to the applicant's mother's schooling in [REDACTED] in the 1970s.

The notarized statements and documents submitted in support of the applicant's claim consistently indicate that the applicant's mother's first entered the United States in 1969 and attended school in Baytown, Texas in the early 1970s. The documentation in the record indicates that she was married in Texas in 1977, and that her son, the applicant's brother, was born in Texas in 1978. The record also includes evidence of the applicant's mother's employment in the United States from 1976 through 1978.

The field office director noted in his decision that the applicant's grandfather's Petition for Alien Relative (filed on behalf of his grandmother) indicated that the applicant's mother resided in Mexico as of March 1969. This information does not contradict the applicant's mother's claim that she entered the United States in 1969. Additionally, the applicant's grandmother's statement that she began residing in the United States in 1972 does not contradict the applicant's mother's statement that she was physically present in the United States since 1969 because the record indicates that the applicant's mother was residing with her brother in the United States during this time. The evidence in the record establishes that the applicant's mother was physically present in the United States starting in 1969 for 10 years prior to 1980, five of which were after 1974 as required for the applicant to acquire U.S. citizenship under former section 301(g) 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 met his burden of proof. The appeal will therefore be sustained.

ORDER: The appeal is sustained.