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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

FILE:

Office: DALLAS, TEXAS

Date: DEC 27 2010

IN RE:

APPLICATION: Application for Certificate of Citizenship under section 301 of the Immigration and Nationality Act; 8 U.S.C. § 1401 (2002)

ON BEHALF OF PETITIONER:

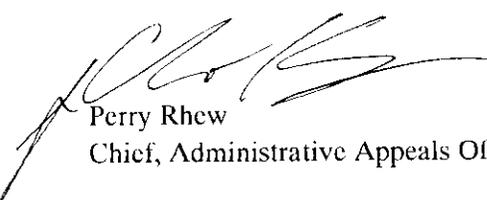
SELF-REPRESENTED

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 \$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, Dallas, 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 in Mexico on January 2, 2002, to unmarried parents [REDACTED]. The applicant's father was born in the United States on February 21, 1986. The applicant's mother was born in Mexico and is not a U.S. citizen. The applicant seeks a certificate of citizenship under section 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(g), based on the claim that he acquired U.S. citizenship at birth through his father.

The director determined that that applicant was not eligible for citizenship under section 301(g) of the Act because his father did not meet the physical presence requirements. The application was denied accordingly. On appeal, the applicant requests review and claims that his father has resided in the United States his entire life.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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. INS*, 247 F.3d 1026, 1028 n.3 (9th Cir. 2001). The applicant in this case was born in 2002. Accordingly, section 301(g) of the Act, 8 U.S.C. § 1401(g), controls his claim to acquired citizenship.

Section 301(g) of the Act states 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 . . . 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 . . . for a period or periods totaling not less than five years, at least two of which were after attaining the age of fourteen years. . .

Therefore, the applicant must establish that his father was physically present in the United States for no less than five years before his birth on January 2, 2002, and that at least two of these years were after his father's fourteenth birthday.

Here, the record reflects that the applicant's father is a U.S. citizen based on his birth in Texas on February 21, 1986. The applicant's father turned 14 on February 21, 2000. Because the applicant was born on January 2, 2002, less than two years after his father's fourteenth birthday, the applicant's father cannot establish at least two years of physical presence in the United States after his fourteenth birthday and before the applicant's birth. Accordingly, the applicant has not acquired citizenship under section 301(g) of the Act.

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). The applicant has failed to establish by a preponderance of the evidence that he meets the requirements for acquired U.S.

citizenship under section 301(g) of the Act. Accordingly, the applicant is not eligible for a certificate of citizenship, and the appeal will be dismissed.

ORDER: The appeal is dismissed.