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U.S. Citizenship and Immigration Services
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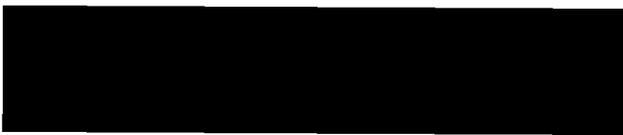
IN RE:

Applicant:



APPLICATION: Application for Certificate of Citizenship under Former Section 301(a)(7) of the Immigration and Nationality Act; 8 U.S.C. § 1401(a)(7) (1964).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The application was denied by the Phoenix, Arizona Field Office Director, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father. The field office director found that the applicant failed to establish a qualifying parent-child relationship with his father and consequently did not derive U.S. citizenship under former section 301(a)(7) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1964).¹ On appeal, counsel asserts that the evidence previously submitted established the requisite relationship for the applicant to acquire citizenship through his father.

The AAO notes that “[t]he 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, 1029 (9th Cir. 2000) (internal citations omitted). The applicant in this case was born in 1964. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7) (1964), is therefore applicable to his case.

Former section 301(a)(7) of the Act stated 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.

The record in this case provides the following pertinent facts. The applicant was born on September 20, 1964 in France. The applicant’s parents, as indicated on his birth certificate, are [REDACTED] and [REDACTED]. The applicant’s father was born in the United States on August 1, 1946. The applicant’s parents were married two years after his birth on December 24, 1966.

Former section 301(a)(7) of the Act required that the applicant establish his father’s physical presence in the United States for at least 10 years prior to his birth, including at least five years after 1960 (when his father turned 14 years old). The applicant cannot meet this requirement because his father was only 18 years old when the applicant was born. Consequently, the applicant’s father was

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.

incapable of being present in the United States for five years after turning 14 *and* prior to the applicant's birth.

Both the director (in his decision) and counsel (on appeal) focus on the applicant's eligibility under former section 309(a) of the Act, 8 U.S.C. § 1409(a) (1964), which stated that for a child born out of wedlock to acquire citizenship under former section 301(a)(7) of the Act, the child's paternity must be established by legitimation before the child turned 21. The director found that the birth certificates and other relevant evidence in the record did not establish whether the applicant was the natural, legitimated, adopted or step-child of his father. Counsel asserts that the preponderance of the evidence shows that the applicant was the natural child of his father whose paternity was established by legitimation when the applicant was a young child. As the applicant's father was incapable of meeting the requisite physical presence requirements to transmit citizenship to the applicant through former section 301(a)(7) of the Act, we do not reach the issue of the applicant's legitimation pursuant to former section 309(a) of the Act.

To have acquired citizenship at birth through his father, the applicant must establish that his father was physically present in the United States for at least 10 years prior to his birth and that at least five of those years were after his father turned 14 years-old. Former section 301(a)(7) of the Act, 8 U.S.C. § 1401(a)(7) (1964). The applicant's father turned 14 in 1960, just four years before the applicant's birth in 1964. Consequently, the applicant did not acquire citizenship through his father under former section 301(a)(7) of the Act.

A person may only obtain citizenship in strict compliance with the statutory requirements imposed by Congress. *INS v. Pangilinan*, 486 U.S. 875, 885 (1988). *See also Fedorenko v United States*, 449 U.S. 490, 506 (1981) (“[t]here must be strict compliance with all the congressionally imposed prerequisites to the acquisition of citizenship.”). Courts may not use their equitable powers to grant citizenship, and any doubts concerning citizenship are to be resolved in favor of the United States. *INS v. Pangilinan*, 486 U.S. at 883-84.

In certificate of citizenship proceedings, the claimant bears the burden of proof to establish the claimed citizenship by a preponderance of the evidence. 8 C.F.R. § 341.2(c) The applicant in the present case has not met his burden. Consequently, the appeal will be dismissed.

ORDER: The appeal is dismissed.