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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: SAN FRANCISCO, CA Date: **JAN 12 2010**

IN RE: Applicant: [REDACTED]

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

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 Field Office Director, San Francisco, California, 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 April 7, 1958 in Mexico. The applicant's parents were [REDACTED] and [REDACTED]. The applicant's father was born in Colorado on July 2, 1928. The applicant's parents were married in Mexico in 1959. The applicant seeks a certificate of citizenship claiming that he acquired U.S. citizenship at birth through his father under section 301(a)(7) of the former Immigration and Nationality Act (the Act), 8 U.S.C. § 1401(a)(7) (1958).¹

The field office director first denied the application finding that the applicant had failed, inter alia, to provide the requested evidence of his parents' marriage and his legitimacy. On July 14, 2009, the director affirmed the denial finding that the applicant did not establish that his father had the required physical presence in the United States prior to the applicant's birth.

On appeal, the applicant, through counsel, maintains that he has established that his father was physically present in the United States as required by section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7). The applicant claims that his father was physically present in the United States, in relevant part, from birth until 1933, and from 1953 to 1958.

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." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir. 2000) (citations omitted). The applicant was born in 1958. Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), is therefore applicable to this case.

Section 301(a)(7) of the former 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 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

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.

such citizen parent may be included in computing the physical presence requirements of this paragraph.

Section 301(a)(7) of the former Act, 8 U.S.C. § 1401(a)(7), thus requires that the applicant establish that his father was physically present in the United States for at least 10 years prior to 1958, five of which after 1942 (when his father turned 14 years old).

The record contains, in relevant part, the applicant's birth and baptismal certificates, the applicant's father's birth certificate, the applicant's parents' marriage certificate (indicating that they were married in Mexico in 1959), a printout statement of earnings reflecting, in relevant part, the applicant's father's earnings from 1954 to 1958, a sworn statement by the applicant's father and an "Affidavit of Parentage and Physical Presence," and an affidavit by [REDACTED] a family friend.

The AAO notes that the statements submitted by the applicant's father and [REDACTED] state, in general terms, that the applicant's father resided in the United States as a child and after 1953. The "Affidavit of Parentage and Physical Presence" appears to be a form recently obtained online from the U.S. Consulate in Mexico. There is no evidence that the "Affidavit of Parentage and Physical Presence" was submitted to any U.S. official. It is not a contemporaneous document, nor does it provide sufficient detail to support the applicant's claim. The applicant's father's earning statement does not sufficiently establish that he was physically present in the United States for 10 years prior to 1958, or five years after 1942. In this regard, the AAO notes in particular the small amount of earnings in 1954 (\$396) and the fact that the applicant was born in Mexico in April of 1958 (when his father earned a total \$2149.97 the entire year). There is no other information in the record regarding the applicant's father's past presence in the United States, such as, for example, documentation of his education, military service, health, employment, residence, or census records.

The AAO finds that the applicant has not established that his father was physically present in the United States for ten years prior to 1958, five of which after attaining the age of 14. The AAO notes that the statements submitted are not sufficiently detailed and are not fully corroborated by documentary evidence.

The AAO notes "[t]here 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). 8 C.F.R. § 341.2(c) provides that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. In order to meet this burden, the applicant must submit relevant, probative and credible evidence to establish that the claim is "probably true" or "more likely than not." *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). The AAO finds that the applicant has failed to meet his burden of proof. His appeal will therefore be dismissed.

ORDER: The appeal is dismissed.